



Oifig an Ombudsman
Office of the Ombudsman

Annual Report 2011

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Report to both Houses of the Oireachtas

I hereby submit my ninth Annual Report to the Dáil and Seanad pursuant to the provisions of Section 6(7) of the Ombudsman Act, 1980. This is the 28th Annual Report submitted in relation to the work of the Office of the Ombudsman since it was established in 1984.

A handwritten signature in black ink, reading "Emily O'Reilly".

Emily O'Reilly

Ombudsman

June 2012



Pat Whelan

Director General

Pat Whelan (retired) was Director General of the Office in the period under review. Ms Bernadette McNally has replaced him.



Chapter I

Chapter 1: Foreword and Introduction from the Ombudsman

1.1 The Ombudsman and the economic downturn

An economic downturn poses challenges not just for individuals and their families but for the public bodies and public servants that deliver services to them, and for Offices such as this one that strive to make sure that people are treated fairly by the State even when resources are limited.



Irish Daily Star, June 09, 2011

I have said on several occasions that the need for the Ombudsman is even more acute at times like this. The government makes choices through its fiscal policy, and certain services and benefits are either abolished or reduced. The role of

the Ombudsman is to make sure that any such changes are implemented in a fair and equitable way and to highlight any anomalies that occur. While people may understand why certain cuts may have to be made, it is unacceptable if such reductions are implemented in an apparently unfair and arbitrary way.

In the immediate aftermath of the downturn in 2008/2009, many people were forced to seek State benefits and services for the very first time. This inevitably led to a rise in complaint numbers as some public bodies struggled to cope. Complaints to this Office reached a ten year record-high in 2010, and while 2011 saw a slight drop in complaints, from 3727 to 3602, we dealt with a greater number of inquiries and assisted many people by redirecting them to the appropriate authority or mediation service. Health and social welfare complaints continue to represent the largest proportion of our complaints and local authority complaints rose marginally.

Not every complaint is upheld or resolved to the satisfaction of the complainant, but irrespective of the outcome, this Office strives to ensure that the people who come to it feel that they are listened to and that they have had, at the very least, an independent consideration of their complaint. That listening ear is all the more important when times are tough and the State no longer provides as much as it did.

We also strive to ensure that public bodies have confidence in the fairness and independence of our work.

When the relationship between a public body and Ombudsman works well the outcome is not just good for a complainant but also for the public body who can use our recommendations and feedback to improve the service they offer. I recognise that public bodies also feel the challenges of the downturn and my Office is always happy to advise them on how to provide their services in a fair and equitable way.

The quality of our public services directly impacts on the quality of life of individuals and of families. When something goes wrong, people can face at times insurmountable challenges in interacting with the public body concerned. My role is to balance out that unequal power relationship and to lend the expertise and authority of my Office to a complainant in order, at the very least, to have their case listened to.



My 'lost' personal documents were found once the Ombudsman got involved - A Complainant



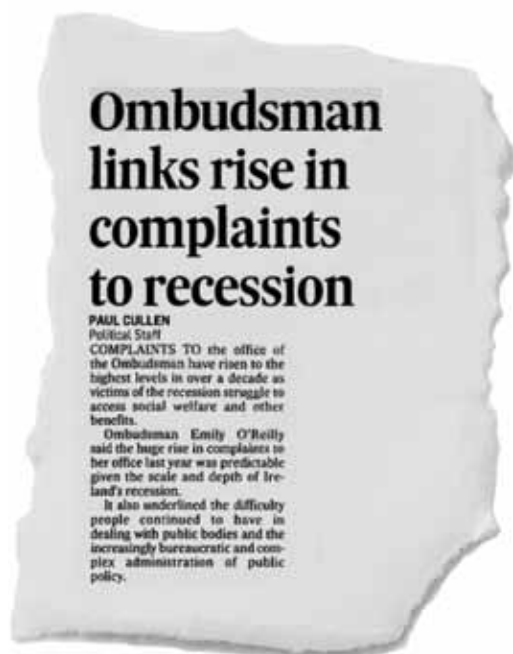
By way of illustration, I would like to recount some of the cases I helped to resolve in 2011 and hopefully by publicising them in this Report it will highlight some systematic issues and lessons learnt:

- I challenged a HSE decision on nursing home charges and secured €85,500 repayment for my complainants,
- I intervened on behalf of parents who found out that their child, who was being treated in a major hospital for a serious illness, had been investigated for non-accidental injury without their knowledge. The injury was in fact caused by the medical treatment their child was receiving. I secured a written apology for the hurt and distress caused to the parents and restored their good name. I also received an assurance from the hospital that it was implementing the Children First Guidelines fully in relation to such matters,
- I upheld a complaint from a woman against two Dublin hospitals in relation to her elderly, highly dependent father. He was poorly treated and cared for and it eased the woman's distress to be given an apology for the failings,
- I had a decision reversed to refuse Carer's Allowance to the father of a woman with mental health problems and a suicidal history. Arrears of over €10,000 were paid to him, and
- In a first ever case of its kind, I upheld a whistleblower's complaint about a flawed HSE investigation.

But despite many positive outcomes to complaints, the recession and cutbacks in both human and financial resources in the public sector have cued new challenges for my Office and our staff. When schemes are cut or public bodies plead inability to pay, we insist that public bodies are open, honest, truthful, and fair with people and do not cause them additional stress by a failure to clarify what their entitlements actually are.

If a prioritisation system (formal or informal) is put in place to cope with limited resources, then people should be told that is the case and have it explained to them. The reasons for the system should be clearly set out, as should the guiding principles determining any prioritisation of one applicant or beneficiary over another.

Public bodies have a duty to be clear and honest about what people are entitled to from them. The worst possible outcome is that people are left in the dark or "fobbed off". If hard political choices have been made, it continues to be the responsibility of the public service to be clear about the outcomes of those choices. It is not the job of the public service to "spin".



Irish Times, June 09, 2011

Public servants must take responsibility for their decisions. The cases highlighted in this Report reveal numerous examples of decisions being reversed following interventions by my Office. Some should never have had to reach that point.

“

Before I contacted the Ombudsman, I felt alone and that I had no one to help me with my problem. I found them very helpful, and after speaking with them I felt a big weight lifted off my shoulders - A Complainant

”

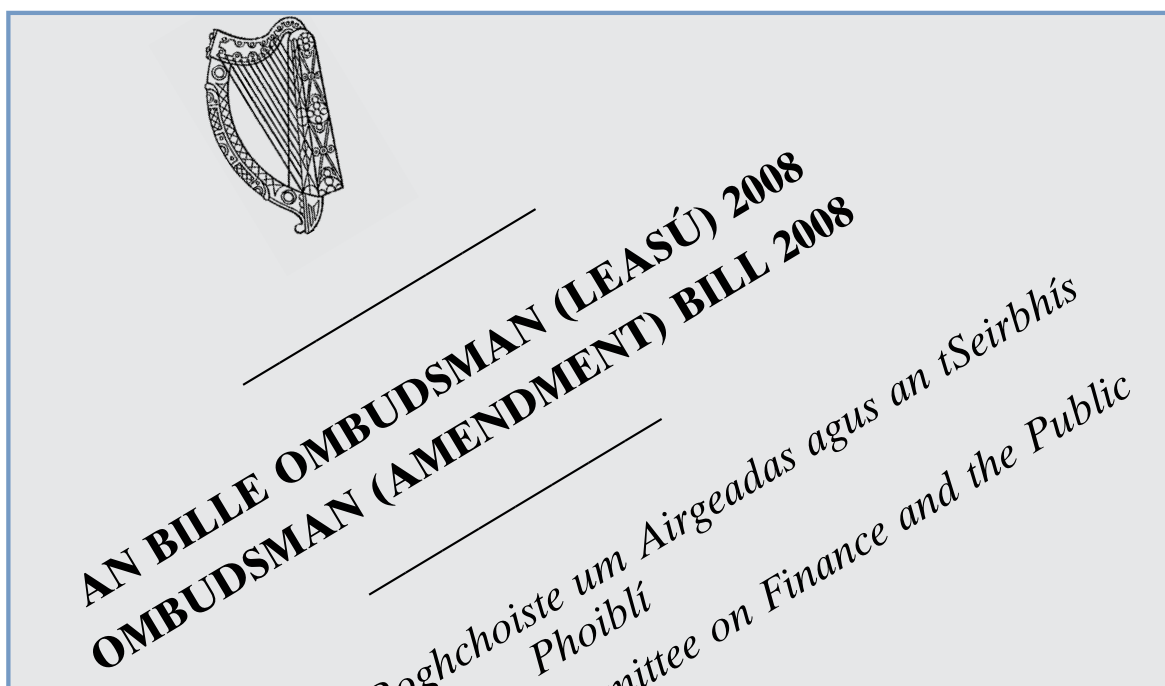
Mistakes will be made in circumstances where human judgement and interpretation are involved, but when a complaint immediately exposes a case to answer, public servants should be encouraged to come forward and deal with it promptly and fairly.



Pictured at the launch of “Caught in the Web” – mapping older people’s information pathways to public services – an Older and Bolder study are L-R seated: Mrs. Justice Catherine McGuinness (retired), Emily O’Reilly, Miss Kitty Flynn, Kilbeggan, Co. Westmeath L-R standing: Ms. Olga McDaid, Report author and Ms. Patricia Conboy, Director, Older and Bolder – Photo: Derek Speirs (courtesy of SeniorTimes)

Many complaints my Office receives should have been caught by the internal complaint procedures of public bodies. Such complaint systems are not an optional extra, to be perfected only in the good times, but a fundamental piece of good administration at all times. For our part, we will continue to strive also to be a fully “fit for purpose” Office responsive to our complainants’ needs in these difficult times.

1.2 Ombudsman Amendment Bill



In previous Annual Reports, I commented on the Ombudsman (Amendment) Bill and the urgent need to expand the remit of the Office so that every user of every public body can have access to an independent means of examination and redress. I specifically sought the inclusion of the prisons and all issues relating to immigration, refugees, asylum seekers and naturalisation within my jurisdiction. Among other things, the Bill provided for 100 additional public bodies in the non-commercial State sector and the third level education sector, to be brought within my authority.



While I believe the Ombudsman (woman) does an excellent job, her terms of reference should be extended to take in all facets of the public service - A Complainant



The Bill was first proposed as far back as 1985. In my 2010 Annual Report I said that I was heartened to note that the New Programme for a National Government included a commitment to extend the remit of the Ombudsman to all publicly funded bodies.

My Office has been working closely with the Department of Public Expenditure and Reform to progress this very important initiative.

1.3 Reform of government - the role of the Office of the Ombudsman

Another commitment in the Programme for Government, which I have strongly welcomed, is the establishment of a new Oireachtas Committee - The Investigations, Oversight and Petitions Committee www.oireachtas.ie.

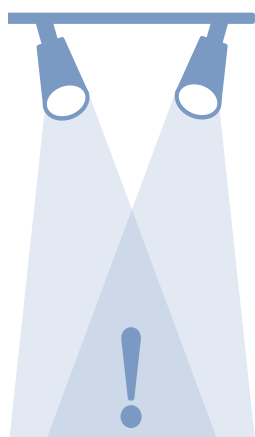
According to the Programme for Government, the new Oireachtas Committee will be:

“...the formal channel of consultation and collaboration between the Oireachtas and the Ombudsman, responsible for receiving and debating her Annual and Special Reports and for ensuring that her criticisms and recommendations are acted upon. For that purpose, she would attend as a regular witness before the Committee.”

This Committee will also,

“...receive parliamentary petitions from individuals and groups in the community seeking the redress of grievances connected with the public services of the State and the public administration generally. Its functions would be to act as a “clearing house”, directing complaints to those bodies most competent to act on them: the Ombudsman, the Data Protection Commissioner, the Local Government Auditor, the Oireachtas Committee that has oversight of the relevant department and so on.”

I hope to have ongoing constructive engagement with the government, the relevant Ministers and their officials in relation to the Programme for Government as it affects my Office and, indeed, on our wider proposals for developing the Ombudsman role, such as gaining constitutional status for the Office of the Ombudsman.



1.4 Spotlighting interesting complaints

It is a long-standing practice for Ombudsmen to highlight in their Annual Reports cases of interest to the general public. Each year I try to select case studies which I think might resonate with the general public. For example, cases which resulted in good outcomes for complainants or led to systemic change in the way in which public bodies deliver their services to the public.

For my 2011 Report, I have selected 17 case studies. All of them, I would hope, clearly demonstrate the advantage of oversight and intervention by my Office.

1.5 Rise in numbers of complaints levels off

The year 2011 witnessed a levelling off in the number of complaints made to me. For the first time in five years, complaint numbers at 3,602 were down slightly – 3.35% less than 2010. The 3,727 complaints made in 2010 was of itself a record 10 year high.

The number of enquiries at 11,541 was up on 2010. This is where we assisted, by redirecting people whose problem was outside of my jurisdiction, to the appropriate authority or mediation service.

My Office continued to cope with this exceptional and challenging work programme without any additional resources and indeed managed to improve our productivity.

The fact that so many people continue to need the services of the Ombudsman by reaching out for our help, underlines the ongoing difficulty people have in dealing with public bodies. The increasingly bureaucratic and complex administration of public policy and administrative actions can pose huge difficulties for the ordinary person.

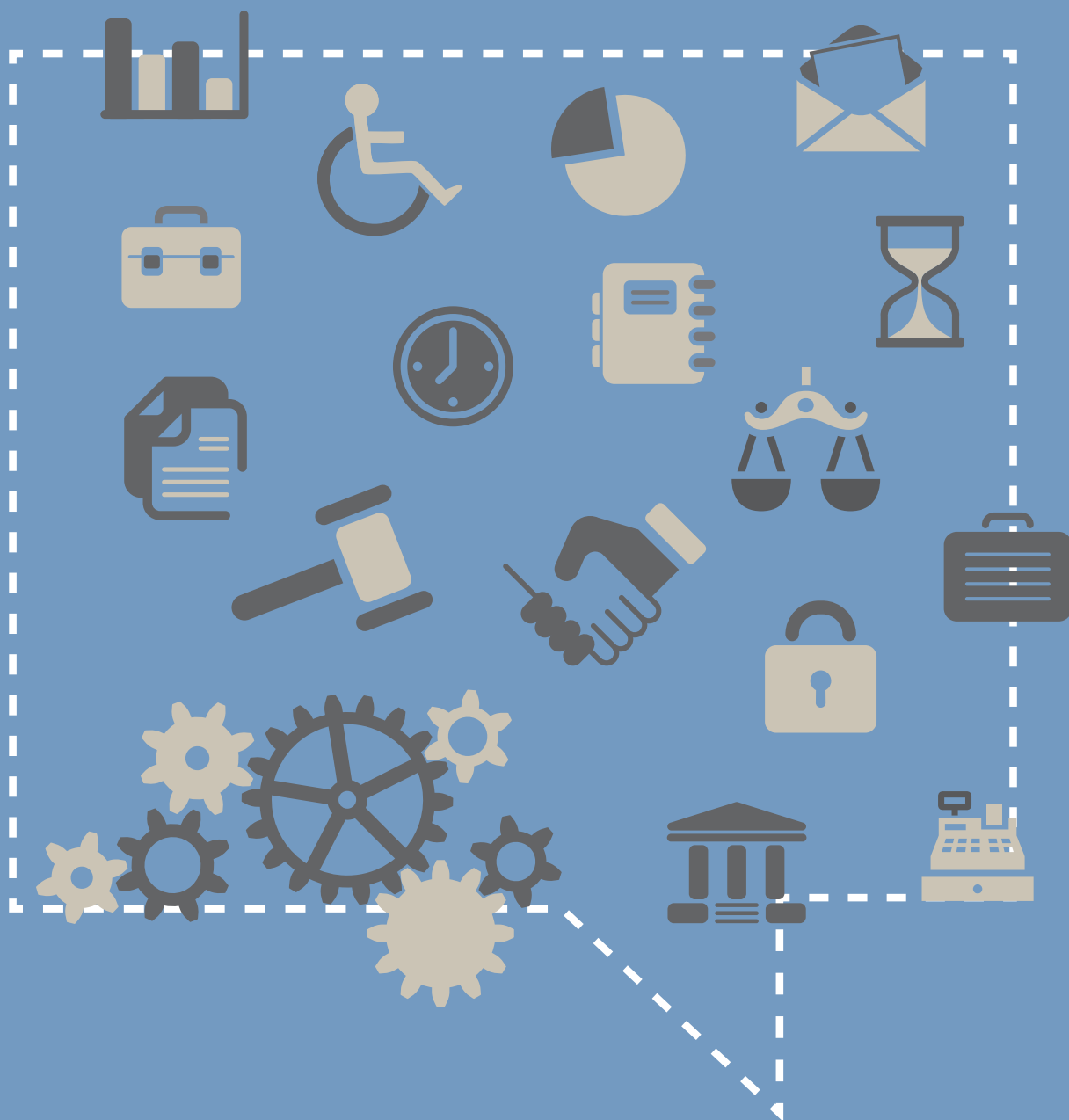
“

I am very grateful for the help you gave me. You showed you listened, and gave your time to investigate the circumstances - A Complainant

”

Not surprisingly, the highest number of complaints came from the health and social services areas while complaints about local authorities were marginally up.

When people appeal to me to challenge a decision by a public body or to criticise it for acting poorly or failing to act appropriately, they deserve and receive an objective and impartial examination of their case.



Chapter 2

Chapter 2: The Ombudsman's Business Review of 2011

2.1 Complaints management

As I have stated, my Office received 3,602 valid complaints and 11,541 enquiries in 2011.

Complaints relating to:

- Civil Service (including Department of Social Protection) - accounted for 46.4% - down 1.4% on 2010.
- Local Authorities - accounted for 27.7 % - up 1.4% on 2010.
- HSE - accounted for 24.4% - down 2.7% on 2010.
- An Post - accounted for 1.5% - no change.

The statistical annex in this report gives a numerical and percentage breakdown of the types of complaints made, for each public body. In terms of a geographical spread Dublin city and county comes out on top with a 21% share of all complaints. The bulk of complaints come from people living in the major cities/towns and urban conurbations. A total of 10% of complaints came from outside the country.

Some 27.3% of complaints were either resolved, partially resolved or had assistance provided by my Office. Some 32.1% of complaints were not upheld. The balance of over 40% were either discontinued or withdrawn.

A very important part of our service is the general assistance we give to enquirers whose complaint we cannot deal with. Sometimes this is because they have not complained to the public body in the first instance or their complaint may be about a public body or issue outside of our remit. Nevertheless, we do our best to offer advice, support and guidance in directing callers to the right place to get help, including other mediation services.

It is evident from the Annual Report statistics for 2011 that significant numbers of people continue to experience difficulties with aspects of public services. Issues in the social protection and benefits areas continue to feature significantly.

Yet again, as in previous years the relatively low number of complaints received under the Disability Act, 2005 is disappointing. It is vitally important that people with a disability know their rights on access to services and information and when they are not happy, that they are aware that they have a right of recourse to me as Ombudsman to examine their unresolved complaints.

It is also crucial that both professional and non-professional people involved in the disability sector are knowledgeable about the Disability Act, 2005 and the Ombudsman's remit.

Just five complaints were made to me in 2011 under the Disability Act, 2005, down two as compared with 2010.

Generally, 2011 was another record year for the receipt of complaints and enquiries to my Office. As ever, the staff of my Office met this considerable challenge head-on and I am pleased with the professionalism and commitment shown by them in what has been for everyone another demanding year.

“

Excellent service. Used it twice. First time apology received.
Second time outcome not in my favour - A Complainant

”

2.2 Healthcomplaints



Irish Examiner, 20 September, 2011



Irish Independent, 20 September, 2011

A multi-agency collaboration to assist members of the public complain about health and social care services in Ireland

In June, 2010 my Office embarked on a pioneering initiative with 17 other statutory and non-statutory agencies to help members of the public in making complaints about health and social care services. There was strong evidence that, despite a robust legal framework for complaint handling and regulation, members of the public were unclear about the processes themselves and about their actual right to complain. There are many complaint handling bodies but limited public knowledge about how they work.

Millions of health and social care interactions occur every year and expenditure is high. Mistakes inevitably occur and feedback is crucial to ensure that problems are addressed, services adjusted, and, ultimately, that patients are confident they are receiving the best possible treatment. Yet, a majority of people interviewed in the course of two recent research studies, reported that when a problem arose, they did not complain, partly because they did not know how to complain.



L-R: Emily O'Reilly, Cathal Magee, CEO of the HSE; Roisin Shortall, TD, Minister of State at the Department of Health

I decided that my Office should spearhead a collaborative initiative to bring about improvements to this vital part of health and social care. Among others, we invited representatives of health and social care providers (the Health Service Executive), Regulators (for example HIQA and the Medical Council), service user representatives, the Ombudsman for Children and the Department of Health, to work with us on the project. Our invitation was met with an overwhelmingly positive response and “Healthcomplaints” was born. A Steering Group and Project Group, both chaired by my Office, developed the following three objectives:

- Members of the public will be enabled to make a complaint or raise a concern about health and social care services and have easy access to clear information on where and how to make a complaint, as well as on how the complaint will be managed once it has been made,
- Members of the public will know how to access assistance in person to make their complaint, in particular through organisations offering advocacy services in the health and social care area, and
- All health and social care organisations will have the necessary skills and understanding to accept or redirect complaints appropriately.

Over a 12 month period, the group worked together to develop, pilot and launch appropriate resource tools. The initiative was completed from within existing human and financial resources. Early consultation took place with service users and complainants, and a training and networking event for staff from the collaborating agencies was organised to test and validate the tools in advance of the launch. The website developed www.healthcomplaints.ie contains information on, for example, the role of all the agencies concerned, contact details, case studies and sample complaint letters. Information tools such as leaflets, booklets, posters and staff information manuals, were developed and made available on participating agency intranet sites and are downloadable from the website www.healthcomplaints.ie. Hard copies of the resource tools were distributed to specifically targeted groups.

Members of the Oireachtas were circulated with information packs and invited to display “Healthcomplaints” posters in their constituency offices. Posters were distributed to and displayed in the waiting rooms of family doctors, hospital outpatient departments, community health centres and other community outlets.



Irish Times Health Plus, 20 September, 2011



Irish Medical Times, 23 September, 2011

“Healthcomplaints” was launched at a conference in Dublin Castle on 19 September, 2011. Keynote Speakers included the Minister of State at the Department of Health Ms Róisín Shorthall T.D, the Chief Executive Officer of the Health Service Executive, the Chief Executive Officers of the Medical Council, the Nursing Council, the Mental Health Commission and the Health Information and Quality Authority. I was honoured to give the opening address.

A most powerful contribution was that of the mother of a young man who had died in a large teaching hospital some years ago. She spoke about her son’s vulnerability while in the care of the hospital, and her and her husband’s distress and panic at seeing him deteriorate unnecessarily in front of their eyes. The failure to ensure consultant cover for periods of annual leave in the hospital had resulted in her son not receiving the medical care he required.

After the young man’s death, it took several years to get the answers and assurances the family required, even with the support and guidance of an advocacy organisation, the Irish Patients’ Association. Ultimately, the woman approached my Office and an Investigator worked with the family and the hospital to obtain the appropriate redress. The complaint resulted in positive systemic change that will benefit many future patients of that hospital and other hospitals. I was gratified that she warmly welcomed “Healthcomplaints”, the information it was providing to the public and the fact that all these agencies had come together to work collaboratively in the interests of service users.

Attendees at the conference included service users, advocates and senior managers from service providers and other organisations. The event attracted major national, local and specialist media publicity that reached an audience of some 3.7 million, a considerable achievement considering that no funding was made available for advertising the initiative.

The “Healthcomplaints” initiative was the first occasion that these agencies in the health and social care sector had worked together. Their constructive engagement over the initial 12 month period has created strong networks for ongoing collaboration. All the agencies have a greater understanding of each others’ unique and intersecting roles which will facilitate a more seamless working relationship in the future.

The website www.healthcomplaints.ie is receiving good traffic and “Healthcomplaints” literature is heavily downloaded. Phone-calls to the main advocacy agencies listed have increased. Indications are that the public are more informed and are now more empowered to choose if they wish to provide feedback or to make a complaint.

At the time of going to press just under 13,000 people had visited www.healthcomplaints.ie since the launch. “Healthcomplaints” continues to act as a central source of information and direction to help people get to the right agency to help them with their complaint. In April, 2012 the initiative was shortlisted for a Taoiseach’s Public Service Excellence Award.

“Healthcomplaints” is now managed by a governance group representative of the agencies that set it up. This group is responsible for managing the website, keeping the information for each organisation up to date and providing ongoing training to people in the member agencies who handle complaints from the public to help find the best resolution to their complaint.

The next phase is to carry out a survey of the agencies involved to assess what impact “Healthcomplaints” has had, gather data where possible on the number and types of complaints received and explore what can be done to improve the use of the site and the “Healthcomplaints” information materials.

2.3 Reform starts at home - root and branch overhaul of complaint handling procedures

Background

As with many other public bodies, my Office has faced the challenge of dealing with increasing and more complex workloads with diminishing resources available to deliver a top quality service to our clients. One of the key objectives of the Office of the Ombudsman’s Strategic Plan 2010-2012 is to ensure that the Office’s structure, systems and processes properly support an organisation that is fit for purpose and delivers its services fairly, efficiently and effectively to its customers.

The Plan was drafted against the backdrop of:

- Exchequer resource constraints,
- The requirements of the Public Service Agreement 2010-2014,
- The significant increase in the number of complaints to the Office in recent years, and
- The planned extension of the Ombudsman’s remit by means of the Ombudsman (Amendment) Bill.

In light of the above, I decided that the Office needed to take a radical look at its structures and procedures so as to make them more cost effective, while still maintaining a service of the highest possible quality. This led to a significant structural and process transformation, the most radical change management project since the Office was established in 1984.

So far this has resulted in greater levels of productivity and much improved turnaround times to close complaints with a significant reduction in the number of older cases on hand in the Office.

Purpose of the Review Process

The process commenced with the engagement of outside consultants in July, 2010 to assist in a comprehensive review of the Office's structures and work processes.

The intention was to identify changes needed to ensure optimal:

- Organisational arrangements, including structures, reporting relationships / responsibilities and resource requirements,
- Business processes,
- Management arrangements, including work practice agility and responsiveness to complainants and other clients, and
- Use of information technology to improve organisational and administrative efficiency.

The Review Process

The Organisational review process began in October, 2010 and the new structure and processes went "live" on 1 March, 2011. The review included a comprehensive consultation process involving all staff. A coordination team was established, comprising staff members from all units of the Office, with a view to understanding and analysing all the processes.

Staff were given an opportunity to have their views and opinions considered. All issues impacting on the organisation's ability to do its work were identified.

A Process Design Team, comprising staff members from all units of the Office, was established to make recommendations for improving organisational and administrative efficiency and effectiveness. Design suggestions were discussed with workshops of staff representatives.

A Mobilisation Group was established to identify and address any issues arising from the revised structures and work processes. The Group continued to work with staff in resolving issues in the months after the implementation date.

A strategic decision was made to designate 1 March, 2011 as the date for full implementation of all the changes. This signalled management's commitment to the change process and provided an urgency and impetus to the review process as well as ensuring that implementation of the necessary changes did not drift.

The New Organisation

Fundamentally, the new organisational structure and work processes signify a move away from what, up to now, were specialised complaint handling units dedicated to particular sectors (e.g. government departments, local authorities, social welfare and health etc.).

A more fluid model was put in place where these divisions have been removed and the organisation simplified to optimise complaint throughput, to increase flexibility and to allow rapid deployment of staff resources to deal with rising demand in any particular unit.

The Office now comprises three process units, Enquiries, Assessment and Examinations. These units deal with all types of complaints, regardless of the public body complained of, and each unit's primary purpose is to resolve each enquiry or complaint as early in the process as possible.

A fourth unit, the Investigations Unit, deals with the more complex complaints which cannot be resolved informally. It also handles systemic investigations which address alleged patterns of bad practice which may be common to groups of complaints, or indeed, a number of public bodies.

Under the new structure every new complaint is received and screened in the new Enquiries Unit, whereas before this a new complaint was received, screened and dealt with in the unit dealing with the particular sector e.g. Local Authority Unit. Every effort is made to complete every case as early as possible with only the more complex cases moving from Enquiries to Assessment, Examination or Investigation as necessary.

Formal protocols are in place which set the ground rules for moving cases from one unit to the next. Also, every effort is made to ensure that caseloads of individual

caseworkers, in terms of numbers and complexity, are not excessive so that they have the time available to process their open cases as promptly and effectively as possible.

Procedural changes include greater delegation of authority to individual caseworkers to bring their cases to finality without the need to refer cases to higher grade caseworkers. Caseworkers are now exposed to cases relating to the full range of public bodies, whereas previously they would only have dealt with cases from particular sectors e.g. local authority cases.

This ensures that, over time, all case workers will be exposed to a much wider range of complaints and will build up knowledge and expertise in a wide range of areas. In the initial stages, caseworkers who were asked to deal with cases in areas previously unfamiliar to them were given training and information and, where necessary, had a Guidance Person (who had particular expertise in the relevant area) assigned to them for the cases.

More robust quality assurance procedures were also put in place to ensure that case working standards are consistent and of the highest possible standard. In addition, Senior Investigators who head up each of the new units hold regular one to one meetings with all caseworkers to discuss all open cases. More informative and up to date monthly case statistics are provided to the Management Advisory Committee to enable it to identify trends and throughput which help it to make timely and appropriate process management decisions.

The new structures and reporting systems also help to quickly identify areas where potential backlogs might be developing and allow management to redeploy resources quickly to respond to any blockages.

The review process also included a review of the Office's IT and telephone systems.

So far so good?

Indications to date suggest that the new structures and processes have made a very positive impact in terms of the Office's effectiveness and efficiency.

For instance, during the review process an analysis was done of the volume of calls the Office had been dealing with which related to matters relevant to other Ombudsman Offices, such as the Office of the Financial Services Ombudsman.

A new telephone answering system was put in place in collaboration with other Ombudsman Offices, whereby callers could be given the option of automatically redirecting their calls to any one of five other Offices.

This resulted, in the period March to December alone, in 3,704 telephone calls being automatically redirected to the appropriate Office. It considerably reduced the volume of unnecessary calls which our Office would otherwise have had to deal with.

Our Enquiries Unit also deals with the vast bulk of other routine calls relating to the work of our Office freeing up the time of caseworkers in the other operational units to concentrate on their own caseloads. In the period March to December the Enquiries Unit had to refer only 58 telephone calls to other operational units.

The total number of open cases carried over from 2010 to 2011 amounted to 1,632. The carry-over from 2011 to 2012 was reduced to 812 open cases. Prior to March, 2011 approximately 54% of cases were closed within three months of being received in the Office. By December, 2011 this had risen to 78% of cases. In the period March to December, 2010 the Office closed a total of 3,088 cases. In the same period in 2011 the Office closed 3,901 cases.

Staff from a number of other Ombudsman Offices, have visited our Office for briefings on the changes and their impact. Hopefully, the lessons learned by us, having been passed on to other Ombudsman Offices, will help them to, in turn, improve their productivity and services.

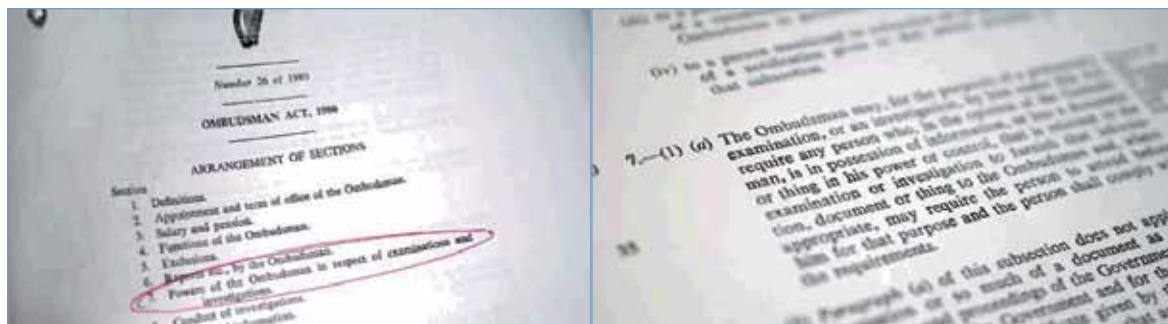
I whole heartedly commend my management team and my staff for the “can-do” approach they adopted to designing and implementing the revised structure and processes in such a short space of time. To their credit, they displayed great willingness to embrace very significant change and to work to bring about further improvements in the service we deliver to our complainants.

“

I made a complaint on behalf of my mother and the person on the phone was very understanding and made me feel better and that I wasn't fighting a losing battle - A Complainant

”

2.4 Notices issued to public bodies under section 7 of the Ombudsman Act, 1980 - demanding information



Under Section 7 (1) (a) of the Ombudsman Act 1980, I am empowered to request information from a person or body, which in my opinion is relevant to an examination or investigation. My Office may issue a Section 7 notice seeking the required information, in a case where there has been a delay in responding to such a request. The annual pattern of such notices over a ten-year period is as follows:

Year	Number of Section 7 notices issued
2011	5
2010	8
2009	8
2008	7
2007	18
2006	18
2005	31
2004	6
2003	12
2002	16

Two Section 7 notices were issued to HSE Dublin North East in 2011 HSE Dublin North East (i)

- Report requested on the 13 December, 2010 - correspondence acknowledged on the 13 January, 2011.
- First reminder issued on the 14 February, 2011 - correspondence not acknowledged.

- Pre-Section 7 letter issued on the 18 February, 2011 – correspondence not acknowledged.
- Section 7 Notice issued on the 9 March, 2011 - correspondence acknowledged on the 25 March, 2011.
- Reminder issued on the 4 July, 2011 - correspondence not acknowledged.
- Section 7 Notice issued on the 26 July, 2011 - correspondence not acknowledged.
- Extension requested on the 8 August, 2011 - extension granted to the 8th September, 2011.
- Report received on the 7 September, 2011.

HSE Dublin North East (ii)

- Report requested on 24 March, 2011 - correspondence not acknowledged.
- First reminder issued on 11 May, 2011 - correspondence acknowledged on 12 May, 2011.
- Second reminder issued on 14 June, 2011 - correspondence acknowledged on 22 June, 2011.
- Third reminder issued on 8 July, 2011 - correspondence acknowledged on 15 July, 2011.
- Pre-Section 7 letter issued on 23 August, 2011 - correspondence acknowledged on 1 September, 2011.
- Section 7 Notice issued on 6 October, 2011.
- Report received on 19 October, 2011.

One Section 7 notice was issued to HSE Dublin Mid-Leinster in 2011

- Report requested on 18 November, 2010 - correspondence acknowledged on 23 November, 2010.
- First reminder issued on 3 February, 2011 - correspondence acknowledged on 15 February, 2011.
- Second reminder issued on 31 March, 2011 - correspondence acknowledged on 6 April, 2011.
- Third reminder issued on 20 April, 2011 - correspondence acknowledged on 29 April, 2011.
- Section 7 Notice issued on 11 May, 2011.
- Report received on 1 June, 2011.

One Section 7 notice was issued to HSE West in 2011

- Report requested on 11 February, 2011 - correspondence acknowledged on 15 February, 2011.

- First reminder issued on 15 March, 2011 - correspondence not acknowledged.
- Final reminder issued on 29 March, 2011 - correspondence not acknowledged.
- Pre-Section 7 letter issued on 7 April, 2011 - correspondence acknowledged on 8 April, 2011.
- Extension requested on 8 April, 2011 - extension granted to 15 April, 2011.
- Section 7 Notice issued on 20 April, 2011.
- Report received on 25 May, 2011.

One Section 7 notice was issued to Department of Social Protection in 2011

- Report requested on the 24 November, 2010 - correspondence not acknowledged.
- First reminder issued on the 9 February, 2010 - correspondence not acknowledged.
- Report requested from the Area manager on the 3 March, 2011 - correspondence not acknowledged.
- First reminder issued to the Area Manager on the 4 May, 2011 - correspondence not acknowledged.
- Pre-Section 7 letter issued to the Area Manager on the 9 June, 2011 – correspondence not acknowledged.
- Section 7 notice issued to the Area Manager on the 17 June, 2011.
- Report received on the 14 July, 2011.

2.5 Ombudsman meetings with dignitaries, officials, etc.

Meeting with Mr Liam Herrick, Executive Director of Irish Penal Reform Trust
- 11th January.

Meeting with Dr Maura Pidgeon, Chief Executive Officer of An Bord Altranais
– 17th January.

Meeting with Dr Maurice Manning, President of the Irish Human Rights Commission
– 28th January.

Meeting with Ms Denise Charlton, Chief Executive Officer of the Immigrant Council of Ireland – 10th February.

Meeting with Ms Ann Abraham, UK Parliamentary Ombudsman and Health Service Ombudsman for England – 8th April.

Meeting with Dr Tom Frawley, Northern Ireland Ombudsman – 15th April.

Meeting with Dr Rafael Ribó i Masso, Catalan Ombudsman – 26th April.

The Ombudsman attended a special event hosted by the British Embassy on the occasion of the first State visit to Ireland by Her Majesty, Queen Elizabeth II and The Duke of Edinburgh – 19th May, The Convention Centre, Dublin.

Meeting with Mr. Thomas Hammarberg, Council of Europe Commissioner for Human Rights – 2nd June.

The Ombudsman gave an address at the Northern Ireland Assembly's Committee for the Office of the First Minister and the Deputy First Minister on the Reform of the Office of the Northern Ireland Ombudsman – 15th June, Belfast.

Meeting with Ms Salome Mbugua, CEO of AkiDwA (The African and Migrant women's network in Ireland) – 21st June.

Meeting with Mr. Mario M Hook, Gibraltar Public Services Ombudsman – 13th July.

Meeting with his Excellency Mr. Carlos Eugenio Garcia de Alba the Mexican Ambassador to Ireland – 14th September.

Meeting with Dr Raúl Plascencia, President of the Mexican National Human Rights Commission – 16th September.

Meeting with Dr Ian Callanan, Clinical Audit Facilitator, St Vincent's Healthcare Group – 17th October.

Meeting with Father Pat Cogan, CEO of Respond Housing Association – 16th November.

Meeting with Ms Patricia Conboy, Director of Older & Bolder – 22nd November.

2.6 Conferences at home and abroad

The Ombudsman chaired the Press Council of Ireland Seminar on "Sources & Accuracy" – 15th January, Cavan.

The Ombudsman gave an address, "The Ombudsman's view of Nursing Home Care in the 21st Century" at St Vincent University Hospital Educational Study on the Elderly, St Vincent's Hospital – 28th January.

The Ombudsman gave an address at the International Women's Day Conference 2011, "Women and Leadership" – 10th March, University of Limerick.

The Ombudsman gave an address, "Executive Accountability & Parliamentary Democracy" on the 5th Anniversary of the National University of Galway's School of Law – 26th March.

The Ombudsman gave an address, "How Good Complaint Handling Makes You a Better Nurse, Nurse Manager, Citizen and Advocate", at ENTRUST - Irish Clinical Nurse Managers Association's Conference – 28th April, Athlone.

The Ombudsman gave an address, "The Citizen & Society in turbulent times" at the Royal College of Surgeons Ireland Hennessy Lecture 2011 – 25th May, Dublin.

The Ombudsman gave an address, "The Importance of sharing and accessing Information", at the Launch of Transparency International Ireland's advice centre and free Information helpline entitled "Speak up" – 26th May, Dublin.

Launch of the Ombudsman Annual Report 2010 – 8th June.

Meeting with the Joint Oireachtas Committee on Investigations, Oversight and Petitions – 20th July, Leinster House.

The Ombudsman gave an address, "Health Policy - An Ombudsman Perspective" at the Mater Hospital Conference – 9th September, Dublin.

The Ombudsman gave an address at the launch of Healthcomplaints.ie, a joint initiative on "How and Where to Complain about Health and Social Care Services in Ireland" – 19th September, Dublin Castle.



Irish Times, 10 September, 2011

The Ombudsman gave an address, "What is needed to create societies that focus on well-being, health and happiness" at Dundalk Institute of Technology's 40th Anniversary – 21st September, Dundalk.

The Ombudsman gave an address, "The Rights of Older People" at the 2nd Annual Conference for Advocates for Older People – 30th September, Farmleigh House.

The Ombudsman gave an address, "Relations between Ombudsmen and Parliaments" at the eight national seminar of the European Network of Ombudsmen – 20th-21st October, Copenhagen, Denmark.

The Ombudsman gave an address, "Leading and managing my service as Ombudsman & Information Commissioner", at the Institute of Leadership Royal College of Surgeons Ireland group – 27th October.

The Ombudsman chaired the Cleraun Media Conference, entitled "Media & Democracy" – 8th November, Cleraun University Centre, Dublin.

The Ombudsman gave an address, "The Perfect State", at the 13th Annual Philip Monahan Memorial Lecture, University College Cork – 17th November.

The Ombudsman delivered the Irish Medical Organisation Annual Doolin Memorial Lecture, “Views on our Health Service in Ireland - An Ombudsman perspective” – 3rd December, Royal College of Surgeons, Dublin.

The Ombudsman gave an address, at the launch of the Amnesty International symposium on “In Plain Sight” – 13th December, Dublin.

2.7 British and Irish Ombudsman Association (BIOA) meetings



In 2011, the Ombudsman attended the following BIOA meetings:

4th March, executive committee meeting, Edinburgh, Scotland.

13th April, round table meeting of the Irish members of BIOA chaired by BIOA and hosted by Mr Paul Kenny, Pensions Ombudsman. Also in attendance, Mr Bill Prasifka, Financial services Ombudsman, and Mr Tom Comerford, his deputy; Mr Simon O’Brien, Chair and Ms Carmel Foley and Mr Kieran Fitzgerald, Commissioners, Garda Síochána Ombudsman Commission; Ms Emily Logan, Ombudsman for Children; Ms Paulyn Marrinan Quinn SC, Ombudsman for the Defence Forces; Prof. John Horgan, Press Ombudsman; Mr Peter Tyndall, Welsh Ombudsman and Chair of BIOA; Mr Ian Pattison, Secretary of BIOA.

12th May, BLOA annual meeting, Loughborough University, Leicestershire, England.

2.8 Public Sector Ombudsmen (PSO) Network Meetings - network of Public Sector Ombudsmen from Ireland and the United Kingdom

In 2011, the Ombudsman attended the following meetings of the PSO Network:

2nd December, Public Sector Ombudsman Meeting, London, England.

2.9 Health Service Ombudsmen Meetings - network of Health Service Ombudsmen and senior officials from Ireland and the United Kingdom

In 2011, the Ombudsman attended the following meetings of Health Service Ombudsmen:

25th February, London, England.

28th October, Cardiff, Wales.

2.10 Other statutory functions of the Ombudsman (and Information Commissioner)

Throughout the year the Ombudsman also attended meetings in her role as an *ex officio* member of the following bodies:

Standards in Public Office Commission,

Commission for Public Service Appointments,

The Referendum Commission, and

The Constituency Commission.



2.11 Annual Energy Efficiency Report 2011

DIRECTIVE 2006/32/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 5 April 2006
on energy end-use efficiency and energy services and repealing Council Directive 93/76/EEC
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission,

Energy usage for 2011 decreased by 10.8% as compared with 2010. This resulted in a reduction of CO₂ emissions of 7.5%.

Staff of the Office engaged regularly with the Office of Public Work's energy consultant throughout 2011. The guidance and advice given to the Office assisted with further actions to curb energy consumption on a sustainable basis. Further meetings are planned for 2012 and more initiatives will be introduced to ensure the overall target of a 20% reduction in energy usage is realised. Additionally, the Office will receive a Display Energy Certificate indicating its current rating in the scheme. Overall our efforts have been noted positively by the OPW.

The reduction in energy usage is illustrated by the charts below. These show a comparison between December, 2010 and December, 2011 as well as a full year comparison between 2010 and 2011. The charts show favourable reductions in energy usage resulting from the more optimal approach to energy usage throughout the Office. Energy usage was as follows for 2011:

Electricity: 267,081 KWh

Gas: 140,100 KWh

Monthly Energy Report

Office of the Ombudsman

Office of the Ombudsman

Dec 2011

Summary

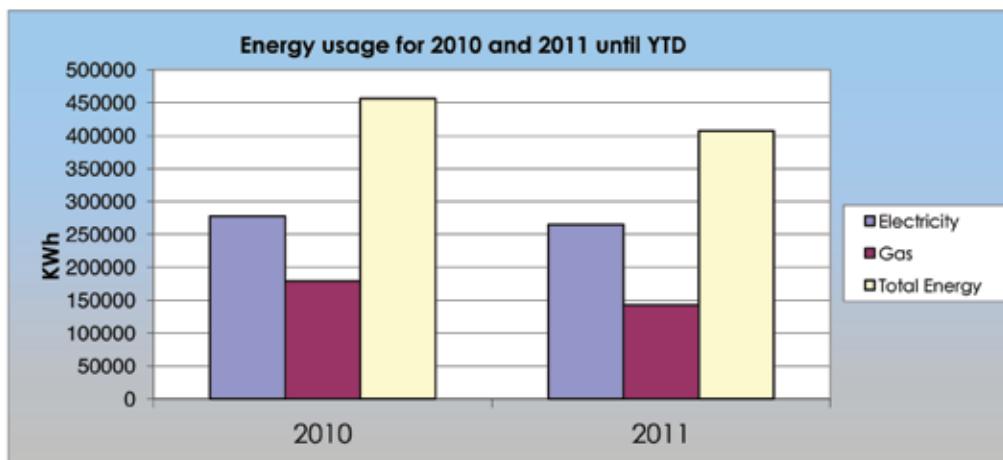
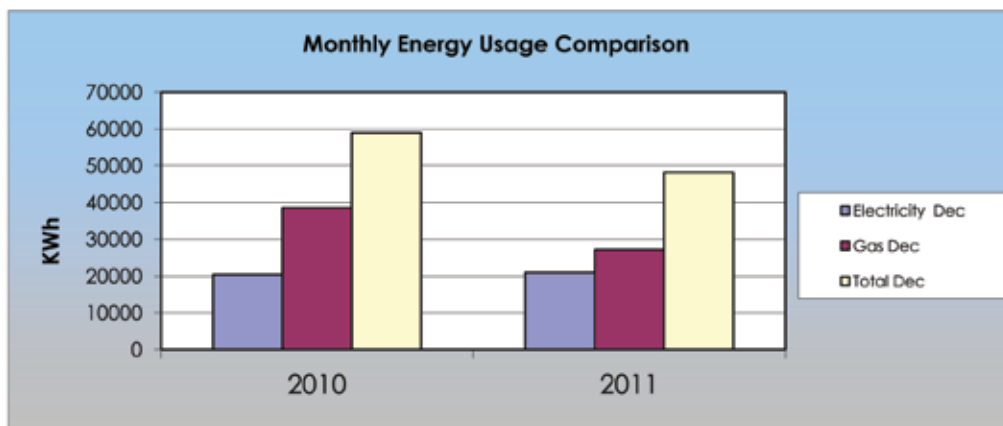
Month to month

Energy usage has decreased by -18.3% from 58,955KWh in Dec 2010 to 48,174kWh in Dec 2011. As a result, CO2 emissions for this period have decreased by -9.9% from 20,155kg to 18,168kg. (-1987Kg)

Annual

2011 year to date energy consumption is 407,181KWh which has decreased by -10.8% on the same period of last year (456,634KWh). This equates to a -49,453KWh difference between the periods. In terms of total CO2, production has decreased by -7.5%, so the year to year comparison figures are 203,439Kg for 2010 & 188,266Kg for 2011 Which is a difference of -15,173Kg.

Energy Use





Chapter 3

Chapter 3: Communications and Research

3.1 Investigation Reports and media releases

3rd February – Media Release on “Developing and Optimising the Role of the Ombudsman”. The Ombudsman wrote on 2 February, 2011 to the leaders and relevant spokespersons of the political parties represented in Dáil Eireann outlining her proposals on how the Ombudsman’s Office can best contribute to reform of government.

8th June – The Ombudsman published and submitted her Annual Report 2010 to each House of the Oireachtas. This was her eight Annual Report and the twenty-seventh since the Office was established in 1984. The Ombudsman also issued a media release and held a press conference, following the publication of her Annual Report.

25th July - The Ombudsman published a Special Investigation Report titled, “Too Old to be Equal?” - An investigation into the illegal refusal of mobility allowance to people over sixty six years of age. The Ombudsman also issued a media release.

19th September - The Ombudsman officiated at the Dublin Castle launch of the joint- initiative “Healthcomplaints” spearheaded by her Office – “How and where to complain about health and social care services in Ireland”.

14th November - The Ombudsman published four Investigation Reports into complaints she successfully resolved in the health and social protection areas. The Ombudsman also issued a media release.

20th December - The Ombudsman published a Special Investigation Report into a complaint against the Health Service Executive and Health Repayment Scheme concerning their failure to refund illegal nursing home charges. The Ombudsman also issued a media release.

3.2 Outreach - Visits to Citizens Information Centres (CICs), regional visits, and other outreach events undertaken in 2011

In my Annual Report 2010, I mentioned that my Office would initiate a review of our outreach programme with the focus on the optimum deployment of resources. A key aim of the review was to increase the capacity of the programme to bring our service to members of the public, living outside of Dublin, in an effective, efficient and accessible manner. The review, the recommendations of which were implemented and which can be viewed on the Ombudsman website (www.ombudsman.ie) was very successful in achieving this aim. Figures below show increases in visitors and valid complaints in 2011 over 2010, from both CICs and regional visits.

As in any year, the range of complaint issues was varied. However, the number of social welfare related complaints taken at CICs increased by 17% over the 2010 figure. This is likely to be connected to the rise in demand for social welfare services generally. The number of Civil Service related complaints taken at CICs increased by 16% whilst, the number of Local Authority and HSE related complaints taken at CICs decreased by 25% and 17% respectively.

The outreach programme is invaluable in bringing the services of my Office to people outside of Dublin, particularly those who favour face-to-face contact when making their complaint.

It is the practice of my Office to publicise outreach programme visits well in advance through local media outlets. In the case of regional visits we also notify all local members of the Oireachtas as well as local elected representatives and other stakeholders.

Citizens Information Centres (CICS)



For over twenty years now, staff from the Office of the Ombudsman have been visiting CICs to take complaints from members of the public. The first CIC to offer monthly Ombudsman services was Cork in 1992. Monthly CIC visits to Limerick and Galway commenced in 1993 and 1996 respectively. The monthly visits to Cork, Limerick and Galway continue to provide a valuable local service, easily accessible to people living there.



Limerick CIC in 2011

121 valid complaints were received. This represents 48% of all new complaints received from Limerick City and county in 2011 – up 10% over 2010.



Galway CIC in 2011

102 valid complaints were received. This represents 41% of all new complaints received from Galway City and county in 2010 – up 34% over 2010.



Cork CIC in 2011

95 valid complaints were received. This represents 23% of all new complaints received from Cork City and county in 2011.



Regional visits in 2011 Wexford – 10th November

57 visitors attended the regional visit resulting in 46 valid new complaints. Some 148 complaints were received from County Wexford in 2011.

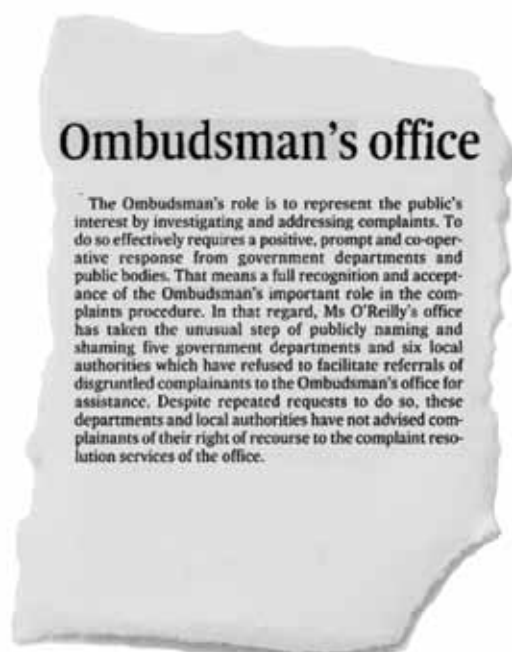
I would like to thank my staff for their participation in our outreach programmes during 2011. As ever, staff continue to bring our service direct to the people in a courteous, disciplined and professional manner.



3.3 Website signposting

In my last three Annual Reports I mentioned that my Office had implemented an Integrated Strategic Communications Plan, a critical objective of which is to increase public awareness of the role of my Office and bring our service to as many people as possible.

In support of our public awareness programme, it would be genuinely helpful to all members of the public if the websites of the departments and other public bodies within our remit had a proper link to the Ombudsman website.



Irish Times, 09 June, 2011



Council Review, 26 July, 2011

In 2008, my Office completed a review of the websites of the relevant public bodies and found that some had no website linkages, inadequate linkages and/or incorrect Ombudsman contact details. Since then my Office has written numerous times to those public bodies concerned and requested each one to make a clear reference to the Office of the Ombudsman on its website.

We included with the letters a suggested website text, providing information and contact details about my Office. I have reproduced the Ombudsman contact and information details in Annex B.

The response to these letters from some of the public bodies was very positive and I am pleased to note that most public bodies met with our request, where needed. However, a number have still not updated their websites.

The list of public bodies which do not show any information about the Office of the Ombudsman or continue to provide inaccurate or incomplete information can be viewed on the Ombudsman website at www.ombudsman.ie/

Given the drive towards public service reform, it is enlightening that a simple request to provide contact details for the Ombudsman's Office on a website is met with disinterest and lack of co-operation on the part of some public bodies. It also illustrates in concrete terms the difficulties members of the public may well have in their dealings with such public bodies, possibly leaving them with no option but to complain to my Office.

Feedback from Ombudsman complainants who participate in our customer surveys, suggests that a growing number of people are accessing the services of my Office through the internet. It is evident then that an important aspect of modern communications is the provision of up-to-date and accurate information, which not only informs the public about the services offered by public bodies but also about how to complain when things go wrong.



Chapter 4

Chapter 4: Investigations

4.1 Investigations

The vast majority of complaints to my Office are dealt with by way of what is known as a “preliminary examination”. This is the legal term used in the Ombudsman Act, 1980. But it should not be understood as implying that the level of attention to and analysis of these complaints is cursory and not comprehensive.

As is clear from the 16 cases featured in this Report, complaints dealt with under the “preliminary examination” process get comprehensive consideration and analysis. As is the case with many Ombudsman offices internationally, the “preliminary examination” process allows for an approach to complaint handling which is relatively informal and facilitates resolution and, where appropriate, redress by agreement.

There will always be a small number of complaints which, for one reason or another, require a more formal process of investigation and reporting and where the “preliminary examination” process is not appropriate. These cases are dealt with under the “investigation” process.

What distinguishes the “investigation” from the “preliminary examination” is that, apart from being a more formal process, investigation cases are concluded with a written investigation report which contains findings and, if relevant, recommendations to the public body concerned.

The recommendations can include the provision of redress for the complainant. It has been my practice in recent years to publish all investigation reports on my Office website and, in some cases, in hard copy also.

During 2011, I completed and published investigation reports in the following cases (All of which can be viewed on our website – www.ombudsman.gov.ie):

4.1.1 Health Service Executive and Health Repayment Scheme - nursing home costs

The outcome of this investigation was that the HSE paid €24,000 to the estate of a recently deceased woman who had been charged incorrectly for nursing home care.

The elderly woman in question, a medical card holder, had been charged for nursing home care during the period 2003 - 2004 at a time when health boards had no legal basis for imposing such charges.

The Health Repayment Scheme (HRS) was set up in 2006 to repay medical card holders who had been charged illegally for nursing home care. When this woman (given the pseudonym Mrs. Coffey in the report) applied under this scheme, her application was rejected. A subsequent appeal to the HRS Appeals Officer was also rejected.

In my investigation, I found that Mrs. Coffey had been placed as a public patient in a private nursing home by the Northern Area Health Board (NAHB) and that the fees she paid during 2003 - 2004 were “recoverable charges”. These should have been refunded under the HRS. The HSE accepted this when it received a draft of my investigation report and promised to refund the fees paid with an appropriate interest element included.

My report describes the highly unusual arrangements agreed to by the former NAHB in deciding to place Mrs. Coffey in a private nursing home. Though she and her family lived on the north side of Dublin, the NAHB arranged Mrs. Coffey’s placement in a private nursing home in Co. Roscommon.

This arrangement was negotiated with the manager of the Roscommon nursing home who was, at the time, a senior NAHB official who had recently been working in the area of services for the elderly and who was then on leave of absence from the health board.

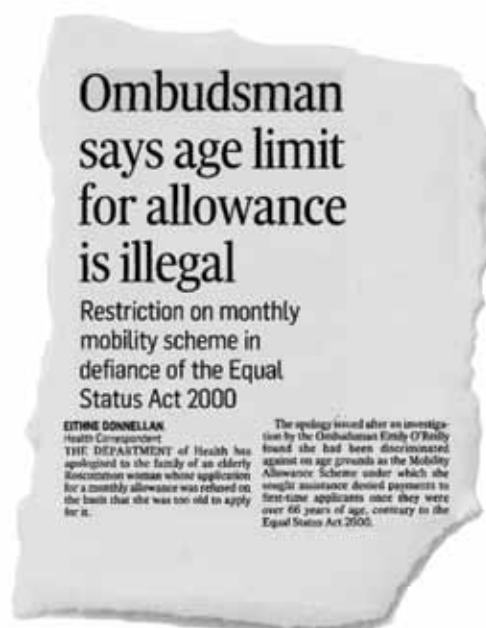
In my report I was also critical of the HRS Appeals Officer on two counts. While he was given incorrect information by the HSE regarding Mrs. Coffey’s status, he failed to take proper account of information provided by her family which suggested very strongly that the information provided to him by the HSE was incorrect. Furthermore, I found that the failure of the Appeals Officer to keep any record of an oral hearing, attended by the Coffey family, reflected an undesirable administrative practice and was contrary to fair or sound administration.

4.1.2 Department of Health - mobility allowance

The outcome of this investigation was that the Department of Health authorised payment of arrears of Mobility Allowance, amounting to about €6,000, to an elderly woman with a disability.



Irish Examiner, 26 July, 2011



Irish Times Health Plus, 26 July, 2011

My Report on this investigation is entitled “Too Old to Be Equal?” This title was intended to highlight the fact that the Mobility Allowance Scheme, as established by the Department of Health, has since the year 2000 been in breach of the Equal Status Act because of a rule which excludes from eligibility anybody over the age of 66 years. Surprisingly, a person receiving Mobility Allowance before reaching the age of 66 years may continue to be paid the allowance after the age of 66 years.

In my Report, I was critical of the Department of Health for having allowed the scheme to continue to operate with an upper age restriction even though the department was aware that this restriction was illegal. The upper age limit in the scheme has been illegal since the commencement of the Equal Status Act in 2000.

I found that the actions of the department do not suggest any sense of urgency on its part in seeking to bring the scheme into compliance with the Equal Status Act,

some eleven years after that Act's commencement. This was despite having had the defects in the Scheme brought to its attention by a number of bodies including the Equality Authority.

The department accepted my finding that the age restriction is in breach of the Equal Status Act and agreed to pay €6,000 in allowance arrears to the particular applicant. It said that it was then engaged in a review of the Mobility Allowance Scheme. I made a general recommendation to the department that it should complete "its review of the Mobility Allowance scheme and, arising from that review, revise the scheme so as to render it compliant with the Equal Status Act 2000. [I further recommended] that this process of review and revision should be completed within six months of the date of the Investigation Report (that is, by October 2011)".

The department accepted this recommendation. Unfortunately, at the time of completion of this Report it has failed to implement this recommendation - see my comments below on compliance matters.

4.1.3 Health Service Executive - St. Mary's Hospital, Phoenix Park - care of an elderly patient

The outcome of this investigation was that the HSE accepted critical findings I made regarding the care of an elderly patient in St. Mary's Hospital. It apologised to the family and had new procedures put in place to prevent a recurrence.

The patient's family had complained following the death of their mother in the hospital. They expressed concerns about the management of their mother's risk of falling (she had a number of falls over a short period towards the end of her life), about attention to her personal hygiene and about the level of activities offered to her. They also complained of poor communication with the family at the time of their mother's death and about the failure to arrange a post-mortem examination that they had requested. The failure to arrange a post-mortem examination meant that, ultimately, the donation of their mother's brain to medical science did not take place. This distressed the family.

In investigating the case I was conscious that, due to the woman's dementia, management of her risk of falling and of her care generally presented considerable challenges. I accepted also that the physical constraints of caring for elderly patients in an old building posed particular difficulties. Nevertheless, I found that the care of this patient was problematic in a number of areas.

I found that, while informal assessments took place, formal reassessments of the woman's risk of falling did not happen as they should have under the hospital's policy. I also found that there was a failure to assess the need for extra supervision for the woman during periods of agitation and increased risk. I had concerns as well about night-time staffing levels in the particular unit in which the woman was accommodated.

In my investigation, I concluded that the medical staff at the hospital had failed to communicate well with the woman's family at the time of their mother's death and that this had caused confusion and upset. Furthermore, I found that not all relevant information had been provided to the Coroner.

The procedures regarding information and consent for the donation of the woman's brain for scientific purposes were not followed by the medical personnel involved and, due to poor administrative arrangements and communication, neither a post-mortem examination nor donation of her brain happened.

All of my detailed recommendations on the various areas dealt with in this case were accepted by the HSE and my Office is committed to following up on their implementation.

4.1.4 Health Service Executive - nursing home subventions

I investigated three separate complaints regarding the level of nursing home subvention where the complaint centred around the extent to which the home of the applicant should be included in the means assessment. The HSE accepted my findings and recommendations in these cases and payments totalling €39,593 covering arrears of subvention and compensatory amounts were paid to the complainants. (The nursing home subvention arrangements have now been replaced for the most part by the Nursing Home Support Scheme – “Fair Deal”).

The common element in these three cases was the fact that the subvention applicant's home was a family home being shared with other family members. While two of the applicants either owned or part owned the family home, the inclusion of the home in the subvention means test gave rise to reduced levels of subvention. The consequence of the reduced levels of subvention was that the patient in each case was unable to meet the balance of private nursing home costs and other family members had to subsidise the costs.

This, in turn, created significant hardship for the family members involved. In one of the cases, the applicant's daughter felt obliged to sell the home she owned jointly with

her mother and this resulted in serious financial loss as well as in enormous upset. Following my investigation, I concluded that in each case it had been open to the HSE to have excluded the family home from the means assessment and that this should have been done.

Investigation Report I

My complainant's mother became a resident in a private nursing home in late 2004. Before that she lived with him and his family. In assessing her entitlement for subvention, the HSE took into account her pension and an imputed income derived from her one-third ownership of the family home. The HSE did not take into account that the family had taken out an extended mortgage to adapt the house to cater for the woman's increasing care needs in later years.

The result was that the amount payable in subvention was reduced, causing financial hardship to the family in meeting the balance of the nursing home fee (which amounted to over €200 per week), on top of the mortgage repayments.

I requested the HSE to review its decision to attribute an income to her based on part ownership of the house in the means assessment. The HSE refused to change its decision. I therefore decided that an investigation was warranted.

Following notification to the HSE of the investigation, the HSE said that it was prepared to disregard the value of the property and arrange for a refund of €5,579.97 to be made.

However, in view of the length of time it had taken for the HSE to agree to my request for a review, I decided to proceed with the investigation. I found that my complainant was adversely affected by the actions of the HSE in dealing with the entitlement of his mother to a nursing home subvention. I also found that the original decision not to disregard the principal residence in the means assessment and the delay involved in revising its decision was based on an undesirable administrative practices and otherwise contrary to fair or sound administration.

I recommended that the HSE, in recognition of the hardship incurred by the family arising from the delay involved in revising the decision, should make an additional payment of €2,500 to the son.

This recommendation was accepted by the HSE and the family received the agreed refund.

Investigation Report 2

My complainant's mother was admitted to a private nursing home in 2007. She had been cared for at home by her son (my complainant) for many years. In assessing her entitlement to subvention, the HSE imputed an income from the family home. The home was owned by her and a value was set at 5% of the estimated market worth.

This amounted to an imputed income value of €326.32 per week and resulted in a basic subvention entitlement of €25.47 per week being awarded to her. She was subsequently considered for an enhanced subvention, and awarded an additional €253 per week, giving a total subvention of just over €278.

This left a €400 weekly shortfall on nursing home fees to be paid when the subvention and her pension was taken into account.

My complainant was unable to make up this difference from his weekly take home pay of €500 per week. Due to his age and salary, he was not in a position to take out a mortgage to buy the house - valued at €340,000. If he were to sell the house to pay for his mother's care, he would have been rendered homeless. This was a circumstance envisaged in the Health (Nursing Homes) (Amendment) Act 2007 which allows for the exclusion of the family home in the income assessment.

I decided to investigate this case.

I found that my complainant was adversely affected by the actions of the HSE in dealing with his mother's entitlement to a subvention. I found that the decision not to disregard the principal residence in the subvention means assessment was improperly discriminatory, based on an undesirable administrative practice and otherwise contrary to fair or sound administration. I acknowledged that the HSE had offered his mother a place in a public nursing home. However, as it was some distance away from his home and workplace and because he wished to continue his daily contact with his mother, I felt it was not unreasonable of him to opt for a private nursing home, close to his home, where his mother would benefit from daily contact with her son.

I recommended that the HSE, in recognition of the hardship caused to him, make a payment of €5,000 to him.

This recommendation was accepted by the HSE.

Investigation Report 3

In this case, my complainant's mother was admitted to a private nursing home in 2008. Before that, my complainant looked after her in the family home.

The family home had been purchased in the joint names of my complainant and her mother, and was financed from the proceeds of the sale of two houses – my complainant's own house and one belonging to her mother, and by a mortgage.

In assessing her mother's entitlement to a subvention, the HSE imputed a weekly income to her of €242.60 in respect of her half share of the family home. This resulted in the basic subvention being reduced to €44.60 per week. She was subsequently awarded an enhanced subvention of €251.00 which brought the total subvention payable to €295.60 per week. This left her with a shortfall of some €1,900 per month when paying for the nursing home.

My complainant appealed this decision to the HSE but her appeal was disallowed in October 2008. Subsequently, she sold her house as she was unable to continue to meet the cost of her mother's nursing home care.

My complainant became unable to work due to ill health. As a consequence, she qualified for Illness Benefit from the then Department of Social and Family Affairs.

Section 7B (3) (b) (iv) (c) of the Health (Nursing Homes) (Amendment) Act 2007, allows for the disregard in the means assessment of: "the principal residence of the applicant, if at the time of the application and thereafter it is continuously occupied by a relative of the applicant in receipt of Illness Benefit".

In light of this, my Office asked the HSE to review its position. In its response, the HSE said that it was not aware that my complainant was in receipt of a social welfare payment. However, it was clear to me that details of her social welfare payment were given when she appealed the HSE's decision.

I decided to initiate an investigation of the complaint.

Following the investigation, I found that my complainant had been adversely affected by the actions of the HSE in dealing with her mother's nursing home subvention application. I found that the decision not to disregard the principal residence in the subvention means assessment was improperly discriminatory, based on an undesirable administrative practice and was otherwise contrary to fair or sound administration.

I recommended that the HSE undertake a full review of the application for subvention taking into account the fact that my complainant was in receipt of Illness Benefit at the time of application.

I also recommended that the HSE make a payment of €10,000 to her in addition to the review outcome. This redress was, I felt appropriate, in light of the hardship, stress and anxiety experienced by her as a result of her having to sell the family home to enable her to meet the costs of her mother's private nursing home care.

While the HSE agreed to undertake a full review of the subvention application, the HSE initially rejected my findings in relation to this case and my recommendation of a payment of €10,000.

However, the recommendations were subsequently accepted by the HSE and a hardship payment of €10,000 was made to her. The HSE also refunded the appropriate subvention for the period in question amounting to €16,513.

4.1.5 Revenue Commissioners - unwarranted seizure of car

Following this investigation, the Revenue Commissioners made a payment of €5,300 to my complainant and also accepted my recommendations for improvements in its administration of enforcement in relation to Vehicle Registration Tax (VRT).

This complaint was prompted by the seizure of a car in Baggot Street, Dublin by two customs officers. The car had been leased in Italy by an Italian citizen who was working in Ireland on a two year fixed term contract. The complainant did not have to re-register the car as he was entitled to "temporary exemption" from VRT by virtue of his fixed term contract. One of the conditions of a temporary exemption from VRT is that the vehicle in question must not be driven by a State citizen.

The car was detained and seized by the customs officers because the complainant's fiancée, a State citizen, was sitting in the driver's seat while the complainant was in a supermarket. The complainant had to pay a penalty to retrieve the car.

Following a detailed investigation, I made a number of findings, including that:

- In its dealings with the complainant Revenue did not properly follow its own procedures in relation to proper record keeping,
- In deciding to detain and seize the car Revenue did not properly follow its own procedures,

- The actions of detention and seizure were contrary to fair or sound administration, and
- The complainant suffered adverse affect arising from the imposition of a financial penalty.

The Revenue Commissioners accepted these findings and agreed to implement my recommendations regarding improved administrative practice and the financial redress to the complainant.

4.2 Investigations Discontinued - Department of Social Protection

During the year I started two investigations involving the Department of Social Protection. Because of developments while they were underway, I decided that it was not necessary to complete these investigations at this point.

One of the investigations was of a complaint from a young woman whose claim for Jobseeker's Allowance was refused on the grounds that she had failed to establish that she was resident at the address stated on her application form. While the woman said she was living with her married sister, it appeared that the Social Welfare Inspector suspected she was living with her parents.

In that latter event, the applicant (who was under 25 years of age at the time) would be assessed with the "benefit and privilege" of living with her parents and the rate of payment would be reduced considerably or there might not be any payment made at all. In deciding to investigate this case, I had a concern that it was not clear whether the department had made any meaningful enquiries as to where the woman was actually living. I was also concerned at the possibility that there might have been an element of prejudgment regarding the woman's place of residence which did not allow her a genuine opportunity to respond.

In the course of the investigation new evidence was produced, some of it procured by my Investigator, which supported the woman's assertion as to her place of residence. At my Investigator's request, the Appeals Officer involved reviewed her decision in the light of the new evidence and decided that the claim to Jobseeker's Allowance should be granted. The woman was paid approximately €4,500 in arrears.

The other discontinued investigation arose from a complaint made by a man who, following his redundancy, had his PRSI status re-classified by the Department of Social

Protection from Class A (employed person) to Class S (self-employed person). This re-classification had serious negative consequences for his entitlements to benefits such as Jobseeker's Benefit and the State Pension (Contributory). In the course of my investigation, the department reviewed the case and changed its decision.

4.3 Non-compliance with recommendation

I have to report to the Houses of the Oireachtas that the Department of Health has failed to comply with the recommendation I made in my investigation of the Mobility Allowance case (see above). My recommendation, which it accepted in full, was that the department should complete "its review of the Mobility Allowance scheme and, arising from that review, revise the scheme so as to render it compliant with the Equal Status Act, 2000. I further recommended that this process of review and revision should be completed within six months of the date of this report (that is, by October 2011)."

My Investigation Report was dated 15 April, 2011. On 21 April, 2011 the then Secretary General wrote to say that his department had accepted this recommendation and intended "to act on it within six months as recommended". This was a commitment to revise the Mobility Allowance scheme and to have a new scheme, compliant with the Equal Status Act, in place within six months, that is, by 15 October, 2011.

This has not happened and, at the time of writing, the Mobility Allowance scheme remains unchanged. This means that the scheme continues to include a condition which is contrary to the Equal Status Act.

In my original Investigation Report I observed that the apparent inability of the department to deal with issues, such as the inclusion of an illegal condition in the Mobility Allowance Scheme, leaves it open "to the perception that it is unconcerned with the fact that it is operating a scheme which is at odds both with the law of the land and with human rights law more generally." More than a year later, the department has not shown that this perception is unwarranted.

I also find it totally unsatisfactory that the department failed to contact me to say that it had not complied, or was unable to comply, with the recommendation.

The department again wrote on 28 November, 2011 to say that the future of the Mobility Allowance scheme "has already been considered by government and is due to be considered again soon. When the Government has made a decision in relation to the mobility allowance, the department will be back in touch with the Ombudsman".

Whether or not the department requires a decision from government on any proposed revision of the Mobility Allowance scheme is unclear. If it does, this would have been known to the department in April, 2011 when it accepted my recommendation. One way or the other, the department has failed to honour its commitment to act on my recommendation within the agreed time frame.



Chapter 5

Chapter 5: Social Protection and Public Healthcare Section – Selected Cases

5.1 Department of Social Protection



5.1.1 Returned emigrant widower refused Jobseeker's Benefit on grounds of habitual residency - Decision reversed

Background

My complainant, a widower, returned to Ireland after spending over 20 years in the United Kingdom. He had lost his job through redundancy. He applied to the Department of Social Protection for Jobseeker's Allowance and was refused on grounds of Habitual Residency.

The department explained that this was due to the fact that he had failed to prove that he had no further interest in the UK. He had been living in a council flat in London. The council in London would not provide him with a letter stating that he had severed all connections with his London flat because his rent was in arrears.

To comply with the Habitual Residency clause, one must prove that his/her main interest is in Ireland. This left my complainant in an untenable position.

Investigation

My Office contacted the council in London and inquired as to the status of the former address in London which my complainant had occupied. We wanted to establish if he still had any interest in the London address.

The London council reverted to confirm that he no longer had an interest in that address or any other address within its jurisdiction.

Outcome

My Office relayed this information to the Department of Social Protection. On foot of this new information, the Appeals Officer of the department reviewed the case and decided to re-open his appeal by way of an oral hearing. The oral hearing resulted in a positive outcome and he was granted Jobseeker's Allowance.

5.1.2 Father's Carer's Allowance for daughter with mental health problems and suicidal history refused - Decision reversed and €10,287 arrears paid

Background

This complaint was received from a father about a decision of the Department of Social Protection to disallow his claim for Carer's Allowance in respect of his daughter. He applied for the allowance in February, 2010 but it was disallowed in April, 2010 on the grounds that the Chief Medical Advisor did not consider his daughter to be "so invalided or disabled as to require full-time care and attention".

He appealed the decision in May, 2010, without success.

Investigation

Having reviewed the department's file, it was noted that the documentation on the decision to refuse the claim and not to grant the appeal gave as a reason that – "the

expected duration of the condition is less than twelve months”. This appeared to be based on information, provided as part of the original application, by the doctor treating his daughter. But the evidence on the files showed that the condition had started in 2008 and was still ongoing.

It was clear my complainant had submitted detailed medical evidence in support of his claim. This attested to the facts that his daughter was suffering from a mental disorder; required constant supervision, had dropped out of school and had intermittent suicidal feelings.

She was being treated for both psychological and psychiatric problems requiring medication and counselling. The consultant treating her stated that the girl's family had to be in her company at all times as she had made significant attempts on her life and that due to significant psychiatric illnesses she remained at risk of taking her life.

Section 179(4)(a)(ii) of the Social Welfare Consolidation Act, 2005 relating to Carer's Allowance is significant here. It states that “a relevant person shall be regarded as requiring full-time care and attention where....the person has such a disability that he or she requires from another person continual supervision in order to avoid danger to himself or herself”.

I requested the department to review the decision to disallow the claim for Carer's Allowance on the basis that:

(1) It appeared the decision only took account of the information contained in the medical report relating to the expected duration of the condition, and

(2) It was not clear whether the supporting medical evidence provided by the claimant was fully considered during the appeal stage.

I also requested that the decision be reviewed having full regard to the legislative provision under Section 179(4) (a) (ii) of the Act.

Outcome:

The decision was reviewed and it was decided to award Carer's Allowance with effect from the date of application in February, 2010. My complainant received payment in December, 2011 of the arrears due, totalling €10,287.12.

5.1.3 Refusal of Family Income Supplement application by Department of Social Protection overturned – Dispute over what constitutes “work time” - Father of seven children gets arrears of €9,000

Background

This case concerned the refusal of an application for Family Income Supplement (FIS) by the Department of Social Protection. A subsequent appeal to the Chief Appeals Officer was also refused.

The applicant, my complainant, was a father of seven children and worked in a low paid position in a care facility.

The job required that he work at the home of the person requiring his care and attention. His employment contract specified that he was required to work 16 hours per week paid at an hourly rate. However, he was also required to perform two periods of night duty (sleepovers amounting to an additional 16 hours work per week). For this he received a premium payment but not an hourly rate.

In order to qualify for FIS you must:

- Work at least nineteen hours every week in paid full-time employment, that you expect to last for at least 3 months,
- Have at least one qualified child under the age of eighteen or aged between eighteen and twenty two in full-time education who normally resides with you, and
- Your average weekly income is below a fixed amount for your family size.

Investigation

On receipt of the complaint, my Office sought further information from the father, including details of his contract of employment.

We then contacted the Chief Appeals Office in the Social Welfare Appeals Office and requested that the decision be reviewed in light of a recent finding in the European Court of Justice as to what constitutes “working time”.

The European Court of Justice (ECJ) in the SIMAP, Jaeger and Dellas judgments, ruled that a period of on-call duty (at the workplace or at another place chosen by the employer) is in its entirety working time, regardless of the work actually done by the person concerned during that on-call duty (ECJ SIMAP C-303/98, ECJ Jaeger C-151/02, ECJ Dellas C-14/04).

Outcome

The Chief Appeals Officer noted the ECJ judgments and overturned the previous decisions. My complainant was awarded €9,000 in arrears of FIS.



Fantastic service – I had felt powerless when dealing for so many years with the Department charged with payment of the long-term in-patient (sic) which had been incorrectly charged and it took this Office and the FOI Act to get a fair deal. Thanks again - A Complainant



5.1.4 Mistake in calculating Jobseeker's Benefit rectified - quick action by department - €2,259 arrears paid to Limerick man

Background

This case is about the Department of Social Protection and the miscalculation of a Jobseeker's Allowance arrears payment.

It arose as a result of the department making the assumption that the claimant had received full rate supplementary welfare payments while waiting for the local social welfare office to process his Jobseeker's Allowance claim.

It later transpired that while the claimant had received a Supplementary Welfare Allowance (SWA) payment from the HSE during the waiting period, the payments he received were at a reduced rate. However, when the Social Welfare Local Office finally assessed his claim, they deducted the full amount of SWA rate instead of the reduced rate. When my complainant contacted them to enquire about outstanding Jobseeker's Allowance arrears, he was told that he was not entitled to receive any such arrears.

It was for this reason the complainant and his spouse presented at one of our Ombudsman's outreach clinics in Limerick to make a complaint. They explained that the outstanding Jobseeker's Allowance arrears had been mistakenly refused by the department and that they were getting nowhere in their efforts to resolve the problem with the department.

In detailing their complaint to the visiting Office Investigator, they described their frustration in their efforts to resolve the problem. They explained that they had been unable to pay their local authority rent as they had been relying on the arrears due

from the department to, in turn, clear the outstanding rental arrears that they had built up.

It was clear from their explanation of events that they had endured considerable hardship and stress during this period and that they had exhausted all the avenues available to them in their attempts to sort out the problem before contacting us.

Investigation

Having listened to the circumstances of the case and the adverse affect this was having on the family, the Ombudsman Investigator contacted the local social welfare office manager immediately by telephone to discuss the matter.

During the course of this discussion, the manager pulled out the relevant file to look at the case in question and immediately noted a possible discrepancy in the figures. He agreed at that stage to look at the case in more detail and to revert back to my Office with an update on his findings.

Later that evening the manager got in touch with the Investigator as promised and said that he believed there were miscalculations on the part of the local office in assessing the complainant's entitlements. He agreed to carry out a full and immediate review of my complainant's situation, as he was aware the complainant was experiencing financial difficulties as a result of the department's apparent mistake.

Outcome

The following day, the local social welfare office contacted my Office to advise of the positive outcome of its review. It confirmed that there was an outstanding amount of €2,259.70 in Jobseeker's Allowance arrears due. Furthermore, the department gave assurances that the arrears would issue to the complainant immediately.

While the department clearly made a mistake, following the intervention of my Office, it moved speedily and sympathetically to resolve the problem.

The complainant was delighted to hear that the Office of the Ombudsman had managed to bring the complaint to conclusion in such a short period of time.

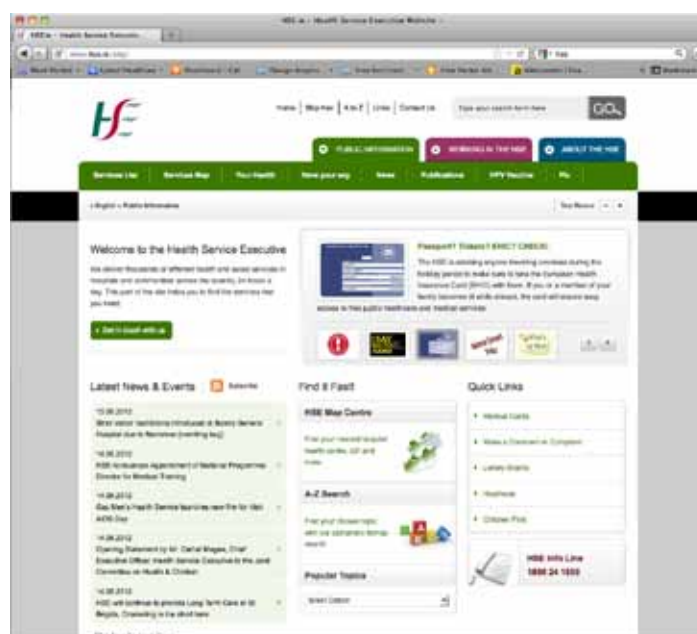
The timely and determined intervention by one individual in the department paid dividends for my complainant and showed that sometimes bureaucracies can have a human face.

“

It is very important and satisfying to know that this process is available and that the Ombudsman will get to the root of the problem. The outcome is then easier to accept – one way or the other. Thank you - A Complainant

”

5.2 Health Service Executive



5.2.1 Mother who had to borrow to pay rent gets €7,750 in backdated Rent Supplement

Background

A woman made a complaint to my Office about the HSE Dublin North West. She claimed that she had been unfairly refused Rent Supplement and had to, as a result, borrow money to pay her rent.

The woman, a self-employed mother of small children, was in receipt of a One Parent Family Payment (OPFP). She ran a pre-school and after-school club. When the business opened, the crèche operated both in the mornings and evenings, so it seemed clear that she was working full-time.

However, the business failed to prosper and her income dropped. Eventually, she had to reduce her hours to mornings only. As a result she contended that she had become a part-time employee and she was entitled to an allowance for her rent.

In assessing her application, the HSE deemed that she was in full-time work. My complainant provided details of the number of children she cared for and their times of attendance, but her application was refused.

She then appealed the refusal. In deciding on the appeal the Appeals Officer stated: “The appeal is allowed. In the circumstances the appellant should be financially assessed for eligibility for Rent Supplement.”

When the woman came to my Office she complained that despite appearing to win the appeal, the HSE had apparently refused to backdate the payment to the time when she first became eligible. She considered that this was unfair as she had borrowed money from friends to pay her rent and she had fully expected to be in a position to repay them when her appeal was decided.

Investigation

My Office engaged with the HSE on her behalf. When we examined all the HSE records in her case, it appeared clear that the Appeals Officer had found in her favour and that a backdated payment would be made to her.

Outcome

The HSE reversed its decision and paid my complainant €7,750 in backdated Rent Supplement. It also apologised for payment delays due to staff shortages.

The outcome for my complainant was significant and I was pleased to be able to help her at a difficult time, employment-wise, for her and for her family.

5.2.2 Daughter's complaint about two hospitals upheld - elderly, highly dependent diabetic father poorly treated and cared for - apologies given for shortcomings



Background

A first complaint was made to me by the daughter of an elderly, highly dependent diabetic man about his care in St Vincent's Hospital, Elm Park, Dublin.

My complainant had identified numerous issues of concern relating to her father's care and treatment and she was not happy with the responses which she had received from the hospital.

These issues included:

- The call bell being out of reach on the floor, which meant that her father could not alert staff to his needs,
- Her father being left in soiled and wet bed clothing on two occasions when the call bell was not within his reach,
- Meals not being provided,
- The splint on his hand being too tight causing him discomfort,
- Poor position in bed causing back problems,
- Refuse in the room and corridor not emptied,

- Tablets left on locker rather than administered directly to him,
- Patient allergic to type of tablet supplied by hospital,
- Potassium tablets stopped by medical staff but nursing staff unaware of this,
- Allegations that a member of nursing staff was about to administer insulin to her diabetic father; in error, but was prevented from doing so by my complainant.

Investigation

My Office met with hospital staff to discuss each of these issues and showed them photographic evidence which my complainant had provided to support her concerns. The hospital responded to each issue with explanations and apologised for the shortcomings in patient care.

In light of the hospital's responses, I identified three specific areas of particular concern. I wrote to the Complaints Officer requesting that she bring these issues to the attention of the Director of Nursing and the Clinical Director so that they could be addressed on an ongoing basis and as part of staff training.

These were:

- Losec MUPS (Gastric restrictive tablets)- This specific preparation of Losec had been prescribed for the patient. Unfortunately, this was not always transcribed when the drug prescription sheet was rewritten by hospital staff. The doctor said this was rectified when it was brought to his attention. However, I felt that it was important to remind the hospital to take all appropriate measures to ensure that medication was properly transcribed and that patients do not receive medication unsuited to them (this patient was allergic to the tablets / preparation supplied by the hospital).
- Potassium tablets - These were stopped by the medical team after bloods were taken, but this action was not documented in the medical notes and no stop date was indicated in the medication chart. Accordingly, nursing staff did not know to withhold the Potassium tablets.
- Allegations that a nurse was about to administer insulin to her father until my complainant stopped her. While I could not determine whether this had happened from the records, I felt that it was very important that nursing staff should be fully trained and continuously reminded of the need for vigilance when administering insulin. It is particularly important that nursing staff check patients' charts and identification before administering medication.

Outcome

I was satisfied with the hospital's reassurance that continuous guidance is in place for staff to ensure that correct medications are administered to patients at all times. I was also satisfied that the hospital undertook to bring my concerns to the attention of key medical and nursing staff, as I had requested.

The key outcome was the apology given to my complainant for the shortcomings in the patient's care.

Background

The second complaint about the same man was made by his daughter against St. Columcille's Hospital, Loughlinstown, Co Dublin.



Prior to his admission to that hospital the elderly man had been cared for by his family at home. On admission, my complainant said that she had provided detailed information to hospital staff about her father's high dependency condition and how his needs were met at home. Nevertheless, five days into his stay and having been nursed continuously in bed on a pressure relieving mattress with cot sides in place, he was taken out of bed by a nurse and left sitting in an ordinary armchair for several hours before he fell from the chair.

My complainant was annoyed that her father had been taken out of bed and left unsupervised for several hours without regard to his mobility or seating needs. She was also upset that although on admission, he had been assessed as being at high risk of developing pressure sores, no consideration had been given to leaving him in this chair without a protective cushion for several hours. She told me that she had written

a formal complaint to the hospital but had received no response. My staff pursued this lack of response with the hospital and the woman subsequently received a reply which was not satisfactory.

The response to her complaint stated that there was no advice or instructions on the patient's file regarding the deployment of a special chair on her father's admission to the ward. The hospital said that it was normal practice to use a standard armchair unless there were medical circumstances that suggested otherwise.

Investigation

My Office wrote to the hospital requesting the relevant records and a full report into the patient's care.

The hospital told me that it was standard practice to sit patients out of bed for a short time each day providing that they were well enough. As this highly dependent elderly patient had been left for over four hours in a standard armchair, without any pressure relieving cushion, and had ultimately fallen from this chair, I wrote again to the hospital seeking an explanation as to why this had happened. Once again, in its response, the Director of Nursing failed to acknowledge that good practice had not been followed in relation to the care of this patient.

I decided to obtain independent, expert, clinical advice. The advice received supported my view that this highly dependent elderly man should not have been taken out of bed for an extended period of time without a prior assessment of his seating or mobility needs.

Given his high level of dependence, he should have been referred to the Physiotherapy/Occupational Therapy departments to review his balance, mobility and seating needs on admission to the ward and a structured falls care plan devised for him.

I felt strongly that the onus should not have been placed on his family to tell staff of his seating needs, as many elderly patients do not have family members to speak on their behalf. I reverted to the hospital having received this clinical advice.

Outcome

The hospital ultimately acknowledged that best practice was not followed in managing this particular patient's seating/pressure needs and the Hospital Administrator wrote a letter of apology to the family acknowledging this fact which they welcomed very much.

I was reassured to learn that the hospital had set up a Falls Strategy Committee following on from this complaint and that new protocols had been introduced to minimise falls on the wards. These new protocols allow patients who are deemed to be at risk to be referred directly by nursing staff to the Occupational Therapy department, and for medical assessment followed by same day referral to the Physiotherapy and Occupational Therapy departments.

I was pleased that ultimately this complaint was taken seriously by hospital staff and that steps were taken to improve patient safety as a result.

5.2.3 €85,442 repaid to Cork couple under Health Repayment Scheme for nursing home charges; €77,317 repaid to two other complainants

Background

This case concerned two rejected applications for repayments under the Health Repayment Scheme. Both had been turned down by the HSE on the grounds that they had not submitted formal applications before the scheme deadline.

My complainants, a Cork married couple, had made the applications in respect of their late mothers who had lived in the same nursing home. They said that they had completed enquiry forms issued by the HSE when the scheme was first announced. Together with two other complainants in a similar position, they said that they understood that the completed enquiry form constituted a formal application and, that they had left the matter in the hands of the HSE.

They acknowledged awareness of media coverage about the scheme which was widely publicised but they had assumed that they had made adequate applications.

Investigation

My Office took up this case and two others with the HSE and the scheme administrator.

We argued that the type of information elicited by the enquiry form was of such detail that my complainants reasonably assumed that they were completing an application form. There was no indication on the form that an additional application would be required. Plus, the acknowledgment provided in response to the lodged enquiry form gave the impression that there was no more for the applicant to do - 'the matter is receiving attention'

Outcome

Following protracted discussions, the HSE agreed to accept the enquiry forms as applications made before the deadline and to process them.

In the case of my married complainants, repayments of €61,242 and €24,200 were made respectively to them by the HSE.

In the case of my other two complainants, they also got repayments which totalled €77,317.

These cases, which resulted in very significant financial redress, clearly demonstrate the importance of the Ombudsman as a scrutiniser of administrative practice and a champion of fair and flexible administration.

5.2.4 Investigation by Our Lady's Hospital, Crumlin, unknown to parents, into non-accidental injury of seriously ill child - Parents get written apology for hurt and distress



Background

My complainants were the parents of a young child who had been treated for a serious and sometimes fatal illness in Crumlin Hospital for Sick Children back in the year 2000. They had moved their son to another hospital later that year as they were unhappy with the level of treatment he was receiving and the way they themselves were being treated by hospital staff.

It was not until 2008 that my complainants had occasion to seek their son's records from Crumlin Hospital, which included records from the hospital social work department.

These records showed that the hospital had conducted an investigation into non-accidental injury involving their son in 2000 because a scan had shown internal bruising of his head.

Their child had been examined and interviewed by hospital staff without parental knowledge or consent. Contact had also been made with external health board staff for advice. My complainants were shocked to discover that they had not been informed about this investigation. Although they recalled being asked questions by social work staff at the time, they had no idea that non-accidental injury was being considered.

Furthermore, they were not provided with an opportunity to clear their good name, which they felt had been tarnished. In hindsight, they believed that hospital staff on the ward where their child was treated knew about the investigation at the time and that this accounted for poor treatment they received on the ward.

It transpired that there was a medical explanation for their son's presentation and, after several weeks, the hospital discontinued its investigation, again unknown to the couple. The parents believed that had they been told about the investigation into non-accidental injury, they would immediately have been able to allay concerns in that regard and hence the hospital's focus could have shifted fully to his medical care, thus ensuring that the needs of the child were best served.

After the parents viewed the records in 2008, they decided to write to the Chief Executive Officer (CEO) of Crumlin Hospital seeking a meeting with him to discuss the issues involved. The CEO declined to meet with the couple although he did respond in writing to them.

The **Children First Guidelines** which were in place in Crumlin hospital in 2000 stressed the need to carry out investigations of this nature in collaboration with the family. The guidelines stated that staff should recognise the important position of the parents of children and that staff should work in partnership with parents, insofar as this is practicable. Yet, the parents had been totally excluded from the investigation process in this instance.

The CEO explained that it was not the practice of the Consultant dealing with their child to inform parents about investigations into suspected non-accidental injury and that it did not follow that the source of the injury was the parent's responsibility.

Investigation

As the complainants were unhappy with the CEO's response, they got in touch with my Office seeking help. My Office wrote to the CEO and subsequently met with him and the hospital General Manager to discuss the case.

Following a Preliminary Examination Report prepared by my Office, the hospital acknowledged that best practice was not followed in the exclusion of the parents from the investigation process. It said that Crumlin Hospital was committed to the implementation of the **Children First Guidelines**. It accepted that communication with this couple was not open or transparent and did not comply with the guidelines in place at that time.

Outcome

The hospital apologised in writing to the couple for the hurt and distress which they had suffered and assured them that the guidelines were being fully adhered to by all hospital staff. The CEO said that he was committed to making sure that parents are treated fairly and in line with best practice. He undertook to ensure that the staff members involved with their son's care and who were still working in the hospital were made aware of the apology and the basis for issuing it.

My complainants were exonerated by the hospital's apology. But it is regrettable that it took the intervention of my Office to put this wrong right. This case highlights the need for the **Children First Guidelines** to be placed on a statutory footing and I welcome developments in this regard.

5.2.5 Mother of child with Asperger's Syndrome contests HSE refusal to backdate Domiciliary Care Allowance - gets *ex-gratia* payment of €5,000

Background

A Tipperary mother complained to me about her difficulties with the HSE regarding an application for a Domiciliary Care Allowance (DCA) for her son. DCA is paid on a monthly basis in respect of children who have a severe disability and require a level of continuous care and attention substantially greater than that normally required by a child of the same age. Her son has Asperger's Syndrome, a well known and serious developmental disorder.

He had only been diagnosed with the condition in November, 2008 and a previous DCA application in 1997 had been refused. In January, 2009, my complainant, armed

with this diagnosis, reapplied for DCA using a form which she received from the local HSE office.

DCA was granted with arrears backdated for six months in accordance with the Department of Health's revised Circular effective from 1 November, 2008.

She appealed the decision because she said that she was never made aware that there was a six month limit to arrears. She felt that it should be backdated to her son's date of birth. The appeal was unsuccessful on the basis that she had received her full entitlement in accordance with the conditions laid down in the department's circular.

Investigation

My staff obtained the relevant files from the HSE. The records contained a copy of her application form which did not mention that backdating was limited to six months.

I sought a review of the Appeals Officer's decision given that my complainant had not been given up to date information at the time of application. She had a reasonable expectation that DCA would be backdated beyond the six months period. I also highlighted that a Consultant's letter on file showed that her son had been born with Asperger's Syndrome.

Outcome

The Review Officer recommended that an ex-gratia payment of €5,000 be paid to my complainant on a number of grounds.

First, as a measure of goodwill, given that she was not advised of the changes in the department's circular. Second, as the application form she completed indicated that backdating was possible and there was evidence that her son required additional care and attention. Third, that there was an onus on the HSE to make her aware that she could apply again following her earlier application in 1997.

The Review Officer also thoughtfully recommended that the HSE, in conjunction with the Department of Health, take a number of actions to remedy the deficiencies identified by the case investigation:

- Put a process in place to ensure that changes to legislation, circulars or entitlements are communicated appropriately,
- Ensure that outdated material or forms are removed, and

- Nominate a key person in each department with responsibility to ensure that appropriate action is taken so that patients and service users have access to accurate information in a timely manner.

My Office was subsequently in contact with the HSE's National Director of Communications. On foot of this complaint and the communication issues which we had highlighted regarding the continued availability of outdated forms, he wrote to each National Director and Assistant National Director and each Regional Director of Operations requesting an immediate review of all documentation in relation to DCA information literature and applications.

While he acknowledged that the administration of the DCA scheme had passed to the Department of Social Protection, the overall principle of this case had implications for all schemes and services and was relevant to the wider organisation. He agreed to develop internal communications guidelines on how to communicate changes to legislation, circulars or entitlements to HSE staff. He also agreed to ensure that the findings of this review were considered by the Publications Audit Group which was undertaken during 2011.

My complainant accepted the *ex-gratia* payment and was happy for her case to be closed.

I was very pleased with the response of the appeals officer and the HSE National Director of Communications, and the actions taken to address communication issues arising from the case.

5.2.6 Whistleblower's complaint about flawed HSE investigation upheld - HSE accepts best practice not followed



Background

In a first of its kind case, I received a complaint from a whistleblower. It was about the manner in which his disclosure had been investigated by the HSE.

An employee of the HSE contacted my Office about a protected disclosure of information which he had made under 2009 whistleblowing legislation. He contended that this disclosure had not been fairly investigated by the HSE.

The purpose of the Labour Services Act, 2009 is to facilitate health service employees to make protected disclosures in good faith where they have reasonable grounds for believing that the health or welfare of patients or clients has been or is likely to be put at risk. It provides statutory protection for employees from penalisation and civil liability as a result of making a protected disclosure.

The Act allows the HSE to appoint another person to investigate the subject matter of the disclosure. In this case, the HSE had appointed a medical consultant, an employee of the HSE, to lead the review.

My complainant believed that:

- The principles of natural justice and fair procedure had not been followed by the investigating team,
- He had not been treated fairly throughout the review process,
- His disclosure had not been investigated in accordance with the terms of reference, and
- He felt that confidentiality was not maintained throughout the process.

Investigation

My staff met with the complainant and critically examined all the documentation relating to the review of the disclosure.

They also met with the HSE to discuss the issues arising from the complaint and requested that the following serious concerns be addressed:

- The Investigating Team did not appear to have been given any procedural or policy guidance to follow as part of its investigation and was not directed to conduct its review in line with principles of natural justice,
- That secretarial support for the investigating team had been provided by the local HSE area pertaining to the disclosure and that interviews were held in the HSE local offices,
- That the complainant was not the first person to be interviewed even though his evidence would have been central to the entire process,
- That, as part of the investigation, the investigating team had randomly selected some of the HSE staff who worked with the complainant to be interviewed; one member of staff who supported the complainant's position was not interviewed at all,

- Following his interview, the complainant was asked to comment on the draft record of his evidence. While he provided comments, he was not given a final version of this record. In addition, when the draft Report issued to him, he requested that the corrected version of his evidence be included as part of the Final Report, but this was not done,
- The disclosure made involved a health and safety issue but this was not addressed by the investigating team in its Report, and
- The complainant had asked the investigating Team to remove an inappropriate conclusion in the Final Report relating to him but this remained in place. (In this regard, this Office believes that it must be borne in mind that the Team was not set up to investigate the complainant's character or his motive for making the disclosure, but rather to examine the subject matter itself).

Outcome

The HSE, having sought comments from the original Investigating team and obtained legal advice, accepted that the process had not been carried out in line with best practice.

It agreed to have the disclosure reinvestigated and it commissioned a new investigation into the matters raised to ensure that the principles of natural justice were followed.



Chapter 6

Chapter 6: Local Authorities – selected cases

6.1 Donegal widow gets €19,425 outstanding home loan written-off by Donegal County Council

Background

In my Annual Report for 2004, I welcomed the introduction by the then Department of the Environment, Community and Local Government of a new Mortgage Protection Plan for all eligible local authority pre-1986 borrowers. In 2011, I dealt with a complaint against Donegal County Council which underlines why the general issue was of such concern to both my predecessor and I.

My complainant is a widow from Donegal. Her husband (the borrower) unexpectedly died shortly after the “pre-1986” Mortgage Protection Scheme became operational on 1 January, 2004. She presumed that on his death the amount outstanding on his local authority loan would be written off and that the loan charge secured on the family home would be removed.

Investigation

The council had approved two housing loans in 1977 for IR£4,500 and in 1982 for IR£9,000. Her husband did not avail of them until 1987. The delay arose because of problems arising with title and a right of way for a septic tank, which he eventually resolved. The loans were for a 30 year period, to be repaid by 2017.

A Local Authority Mortgage Protection Scheme was introduced in 1986 which dealt with loans approved on or after 1 July, 1986. It appears that as his loan approval predated the introduction of this Scheme, he would have been precluded from the scope of the “1986” scheme.

The standard procedure “pre - 1986” was that the local authority advised recipients of council loans of the desirability of arranging their own mortgage protection plan. The council had written to my complainant’s husband in 1981 and 1982 in this regard.

However, it would have been expected that the borrower's loan would have come to the attention of the council in the review of pre-1986 borrowers which was prompted by the new Mortgage Protection Scheme which became operational on 1 January, 2004.

A critical aspect of the Scheme was that it was one in which the borrower had to effectively opt out. The pre-1986 borrower was to receive a standard letter issued by registered post from the local authority with a post-paid envelope enclosed. The letter sought some form of acknowledgement so as to ensure that borrowers understood fully that they were included in the scheme unless they requested otherwise.

It appeared to me that, inadvertently, the borrower's loan did not come to the attention of the council in the crucial period September, 2003 to January, 2004. Had that happened, I concluded that it would be reasonable to presume that this would have allowed the council to clarify with the department whether his particular circumstances would fit into the new scheme i.e. loan approved pre 1986 but drawn down post 1986.

Of course it would also have allowed the borrower to opt out, if it was the case he was not happy to make the extra payment on his loan so as to provide for mortgage protection cover.

It is important to note that the complainant was able to demonstrate that her husband, on the grounds of his age and by virtue of not having his own personal mortgage protection plan, would have been initially suitable for full consideration by the council under the "pre-1986" Mortgage Protection Scheme. She was also most ably represented and assisted by her MABS advisor.

Outcome

The council accepted that in view of the anomaly that existed in relation to the specific circumstances of the case, they would write off €19,425.29 which was outstanding on the loan.



6.2 In the “Year of the Honeybee” beekeeper gets €349 in compensation from Waterford County Council for destruction of 11 beehives

Background

My complainant had looked for a payment from Waterford County Council of some €349.30 in compensation for the destruction of 11 of his beehives.

The only issue in dispute was about who should pay. The council accepted fully that the beekeeper was due his compensation. But, they argued that such payments were a matter for the Department of Agriculture, Food and the Marine.

The issue was complicated by the fact that the primary legislation, which required the destruction of the beehives, the Bee Pest Prevention (Ireland) Act, 1908 predated the foundation of the State.

The complainant had already received compensation from another local authority under the 1908 Act for other beehives kept by him which had to be destroyed.

Investigation

I examined the legislation in detail and my Office checked with other local authorities to discover that there was much administrative uncertainty on the issue of this type of compensation. I asked the department to issue a circular to the local authorities clarifying the position.

Outcome

The council paid the compensation to the complainant and the department issued a circular on the administration of the 1908 Act ensuring greater clarity in future.

I was particularly pleased to help my beekeeper complainant as 2011 had been declared the “Year of the Honeybee” by the Federation of Irish Beekeepers Association.

6.3 You need to know about a planning application to object

Background

During the year, my Office examined a complaint against Waterford County Council.

My complainants lived in a house located in a cul-de-sac in a Waterford town. The houses in the estate behind them were also situated in a cul-de-sac but, significantly, were built on a higher level than their house.

In February, 2011 they became aware of a house being built directly behind their back garden. It transpired that planning permission had been granted by the council in late 2010 for this new house looking down on them.

No one living in their estate was aware of the planning application. Enquiries with the local Planning Office disclosed that the site notice would have been placed at the entrance to the site in the other estate, as well as in a local paper - The Munster Express.

The complainants' estate was a one mile drive from the estate where the development took place, so, nobody living in my complainants' estate would have been likely to see a site notice erected in the other estate.

There are certain procedural requirements under current planning legislation when planning permission is being applied for. Specifically, it is a requirement that the applicant erect in a prominent position a site notice which describes the nature of the proposed development, the date of application and the name of the applicant. They must also place a notice in an approved newspaper:

The site notice must be displayed at the main entrance of the site (where there are more than a number of entrances a notice must be placed at each entrance). The notice advises people of their right to make observations or objections to the proposed development. It must be in place for a period of five weeks during which time the planning authority must inspect the site to ensure that the notice is adequate and properly displayed.

However, in this case, the complainants had little chance, other than perhaps spotting the newspaper notice, of having the opportunity to object to the application despite the potential adverse impact on their privacy.

Investigation

In this case, even though the complainants were adversely affected by the new development they had no reasonable chance of seeing the site notice and becoming aware of the development when it was at the proposal stage. I could find no evidence to suggest that the handling of the planning application by the council was other than in accordance with current legislative requirements. Therefore, I could not uphold the complaint against the council.

In my view, this case highlighted a very important issue as to the extent to which current legislation provides for sufficient notification of planning applications. While I had only one such complaint, it would be most likely that similar, or somewhat similar, cases are arising elsewhere.

In this case, the complainants referred to the practice in England whereby local authorities inform adjoining residents of planning applications and invite comments.

Given the continuing falling sales and circulation of some newspapers it could be argued that this is not a sufficient medium for notifying the public that a planning application has been made. Overall, this highlights a weakness in the planning process on letting people know about applications of interest to them by virtue of their location.

The Department of Environment, Community & Local Government is responsible for overseeing planning legislation. I decided that my Office should write to the department about the complaint and my wider concerns.

In doing so, I expressed the view that planning notification procedures should be comprehensive, effective and robust. This would ensure that residents living near proposed developments, which have the potential to cause them adverse affect, are likely to become aware of the planning application in time to submit any objections they may wish to make.

In communicating with the department, I also acknowledged that it may be challenging to enshrine in legislation more appropriate notification procedures to avoid all possible difficulties in this regard. I did, however, ask the department to give consideration, in the context of future amendments to planning legislation, as to how improvements might be brought in to provide improved notification procedures for possible objectors in light of the circumstances highlighted by this case.

Outcome

The department subsequently responded to my Office and gave assurances that the department will give consideration to the difficulties I had revealed in the context of future proposals to amend planning legislation/regulations. I am grateful to the department for this positive response. I look forward to its reform proposals when it has completed its consideration of the issue.

6.4 Limerick City Council ignores notification about an unauthorised shed development and grants planning permission

Background

This case is about how Limerick City Council dealt with a man when he complained about an unauthorised shed development.

My complainant was told by the council that enforcement action would be taken and the council sent a warning letter to the developer. Subsequently, unknown to my complainant, the developer submitted a planning application to retain the development and this was approved.

The council official who inspected the application for the retention planning permission was unaware that the development was the subject of an unauthorised development complaint.

Investigation

While we could not examine the decision to grant the planning permission, I was concerned about the effectiveness of the council's internal communication systems and its communication with my complainant.

My Office wrote to the council drawing its attention to the communication shortcomings in this case. We suggested that the council should have made their complainant aware of the planning enforcement process. We also suggested that there was a need for greater transparency in the process.

We were critical of the council's internal communication systems. In particular, the fact that the officer dealing with the application for planning permission to retain the development was not aware that another unit in the office had received an unauthorised development complaint and had issued a warning letter to the developer applicant.

Outcome

The council reviewed the communication process in its Planning department and overhauled its communication procedures.

The new procedure provides that a complainant is provided with information about the council's unauthorised developments procedure. This includes details about enforcement action, retention permission for unauthorised developments and making a complaint about such developments.

The council also informed my Office of its plan to introduce changes as to how enforcement issues are tracked within the Planning department. This will signal to planners if an unauthorised development issue has arisen in cases where a retention application is submitted.

6.5 Bray Town Council house tenant gets refusal to carry out essential repairs reversed

Background

I received a complaint from a woman who was a tenant of Bray Town Council.

My complainant told my Office that when she was allocated her house she was informed by the town council that any necessary repairs would be carried out. The repairs she listed included a leaking porch, a leaking roof, rotten fascia boards and draughts coming through from the outside walls.

When she approached the council with the repair list, she was informed that the house was in reasonable condition when allocated and that the council would only carry out certain limited repairs.

Investigation

Having received and examined all relevant documentation from the council and from my complainant, my Office engaged with the council. However, efforts to bring the parties together with an agreed work programme proved unsuccessful, initially.

My investigation staff then decided to visit and inspect the house, with my complainant's permission. They observed the condition of the house and took photographs.

A report on the inspection visit was compiled and forwarded to the council, including the photographic evidence. A proposal was made by my Office on the essential repairs considered to be needed.

Outcome

I am pleased to say that the council agreed to carry out all the repairs that my Office had asked for, which included a new roof on the porch.

My complainant was happy with the outcome and the successful intervention of my Office on her behalf.



Chapter 7

Chapter 7: Civil Service – selected cases

7.1 €20,000 reduction of Rural Environment Protection Scheme (REPS) penalty for Kerry organic farmer

Background

This case was about a Rural Environment Protection Scheme (REPS) participant. My complainant was also the holder of an organic licence.

In 2008, the woman became ill and, as a result, allowed her organic licence to lapse for a few months. As such, she was notified by the Department of Agriculture, Food and the Marine that it would be clawing back payments made to her for participation in REPS, amounting to in excess of €25,000, over 5 years.

The department noted that the terms & conditions of REPS state:

“Withdrawal or non renewal of an organic licence within the term of the REPS commitment shall mean termination from the Supplementary Measure and full recoupment of all aid paid under the Supplementary Measure including interest payable under SI 463/2003”.

The Irish Organic Farmers & Growers Association (IOFGA) is the licence issuing authority acting on behalf of the department. It operates an informal grace period system whereby an organic licence can be renewed within two weeks of the date the lapsed notice issues. However, there is no mention of this on the lapsed notice. An applicant would only be informed of this if they contact IOFGA following receipt of the lapsed notice.

My complainant's organic license lapsed on 31st December, 2008. IOFGA sent out a request seeking her renewal on 14th January, 2009 for the 2009 calendar year; and although it would normally send out a reminder letter there was no indication

on file that one was sent in this case. IOFGA then issued the lapsed notice to my complainant on 14 May, 2009.

It was established at an oral appeal hearing that my complainant's husband had contacted IOFGA shortly after receipt of the lapsed notice by phone. The department said that IOFGA confirmed that it outlined to the organic farmer's husband, when he called, what action was required. IOFGA had indicated that there was a two week period after the lapsed letter was issued in which to return the renewal notice and the appropriate fee.

The issue was not addressed until 19, October, 2009 (5 months later) which the department said was not an acceptable period of time to deal with the matter.

Investigation

I found that there was a direct conflict of evidence between IOFGA and the husband of my complainant as to the detail of the telephone conversation in question. The organic farmer's husband maintained that he was never informed that there was only a two week deadline to renew the organic licence.

I was satisfied that best administrative practice was not followed in terms of informing my complainant, in writing, of the deadline for renewal of the licence, following this telephone contact. I also noted that the organic farmer had adhered to all organic standards and the farm was managed in the spirit of the scheme during the period in question.

Therefore, I was satisfied that there were mitigating circumstances to reduce the penalty in this case. I requested that the department review its decision with a view to reducing the penalty for the year in which the organic licence had lapsed.

Outcome

The department acknowledged that best practice was not followed by IOFGA in this case. In view of my recommendation it was willing to reduce the penalty in this case from five years to one year. This decision resulted in the penalty being reduced from over €25,000 to €5,032.45.

I also requested that the department direct IOFGA, a body not within my remit, to review its procedures in relation to this matter i.e. that the two week grace period be included on all future lapsed notice letters.

7.2 Teacher whose PRSI contributions were incorrectly deducted refunded €5,500

Background

There are different classes of PRSI which employed people pay, depending on the nature of their employment. Classes A and D are relevant to this case.

Class A is for people in industrial, commercial and service-type employment who earn more than €38 per week, and civil and public employees recruited from 6th April, 1995. It is compulsory for all employees over 16 years and under 66 years of age. This is commonly referred to as full rate PRSI.

Classes B and D are for permanent and pensionable public employees appointed before the 6th April, 1995. This is commonly referred to as modified rate PRSI. Class D is the appropriate class for teachers appointed before 6th April, 1995.

A County Cavan teacher, appointed before 6th April, 1995 made a complaint to me about the Department of Education and Skills (DES). She claimed that as a result of mistaken PRSI deductions made from her salary by the department, she was out of pocket by some €5,500.

The erroneous deductions had been paid to the Department of Social Protection (DSP). She had only discovered the error when she planned to retire. Because of the late discovery, she was unable to obtain a full refund of the overpayment going back beyond four years as this was the statutory cut-off point.

My complainant contended that it was unreasonable she should be expected to suffer financially due to a mistake made by a government department, even if there was a cut-off point in law.

Investigation

My Office sought a report from DES. This disclosed that the teacher was placed on A Class PRSI when she applied to join the pension scheme in 1996, having been appointed before 6th April, 1995. Before 1996, certain teachers were not eligible to become members of the teachers' pension scheme. Those teachers were not considered full-time permanent appointees and therefore, as stated by the department "were classed as Class A for PRSI and the coordinated rate of pension in order, to ensure that they could avail of PRSI benefits" i.e., they would not

otherwise have qualified for PRSI benefits as they were not considered to be full-time permanent employees.

The Scope Section in DSP ruled that the teacher in question should have paid the modified rate of PRSI from 1996, rather than the full rate she was placed on by DES. This resulted in an underpayment of pension contributions and an overpayment of PRSI contributions. However, although DES had paid the contributions to DSP, DSP would not refund the contributions to the teacher or, to DES, because the law only allowed for a refund up to four years from the time the teacher became aware of the error.

Outcome

My Office contacted DES and asked it to explain why an error made by it should result in the teacher being penalised.

The matter was reviewed at a senior level between the two departments and a refund of €5,500 was made by DES.

Also, a new protocol has now been put in place between the two departments. This will ensure that any teacher in a similar case will be able to have their records amended and a refund made (if applicable) of PRSI contributions paid outside of the four year statutory period.



Annex

Annex A: Statistics



Table 1: Overview of 2011 complaints	
Total complaints carried forward from 2010	1,630
Total complaints within remit - received in 2011	3,602
Total on hand for 2011	5,232
Total complaints completed in 2011	4,420
Total complaints carried forward to 2012	812
Total complaints outside remit - received in 2011	1,476
Total all complaints received in 2011	5,078
Total all enquiries received in 2011	11,541

Table 2: Numerical and percentage breakdown by sector of complaints within remit

Civil Service (including Department of Social protection)	1,670	46.4%
Local Authorities	998	27.7%
Health Service Executive	874	24.3%
An Post	55	1.5%
Disability Act 2005	5	0.1%
Total	3,602	

Table 3: Numerical and percentage breakdown of complaints completed by outcome

Complaint resolved	395	8.9%
Partially resolved	58	1.3%
Assistance provided	758	17.1%
Not upheld	1,416	32.1%
Discontinued	1,727	39.1%
Withdrawn	66	1.5%
Total	4,420	

Table 4: 10-year trend of complaints received within remit

2011	3,602
2010	3,727
2009	2,873
2008	2,787
2007	2,578
2006	2,245
2005	2,243
2004	2,064
2003	2,213
2002	2,326

Table 5: Numerical breakdown of complaints received by county		
Carlow	33	0.9%
Cavan	46	1.3%
Clare	70	1.9%
Cork	419	11.6%
Donegal	139	3.9%
Dublin	757	21.0%
Galway	247	6.9%
Kerry	110	3.1%
Kildare	103	2.9%
Kilkenny	49	1.4%
Laois	55	1.5%
Leitrim	26	0.7%
Limerick	251	7.0%
Longford	23	0.6%
Louth	77	2.1%
Mayo	83	2.3%
Meath	109	3.0%
Monaghan	36	1.0%
Offaly	62	1.7%
Roscommon	44	1.2%
Sligo	41	1.1%
Tipperary	90	2.5%
Waterford	62	1.7%
Westmeath	62	1.7%
Wexford	148	4.1%
Wicklow	100	2.8%
Outside Republic	360	10.0%
Total	3,602	

Table 6: Numerical and percentage breakdown of types of complaint received outside remit

Public bodies outside remit	476	32.2%
Banking/Insurance	250	16.9%
Private companies	201	13.6%
Courts / An Garda Síochána	140	9.5%
Terms and conditions of employment	132	8.9%
Miscellaneous	277	18.8%
Total	1,476	

Civil Service

Table 7: Civil Service - Numerical breakdown of complaints received by Government Departments and Revenue Commissioners

	Brought forward from 2010	Received in 2011	On hand for 2011
Social Protection - see 7(a)	492	1,135	1,627
Revenue Commissioners - see 7(b)	25	109	134
Justice and Equality - see 7(c)	8	55	63
Agriculture, Food and the Marine - see 7(d)	80	162	242
Education and Skills - see 7(e)	31	60	91
Environment, Community and Local Government - see 7(f)	4	21	25
Health - see 7(g)	3	34	37
Jobs, Enterprise and Innovation - see 7(h)	4	14	18
Foreign Affairs and Trade - see 7(i)	0	31	31
Communications, Energy and Natural Resources - see 7(j)	0	7	7
Transport, Tourism and Sport - see 7(k)	2	2	4
Others	15	40	55
Total	664	1,670	2,334

Table 7(a): Department of Social Protection		
Numerical and percentage breakdown of types of complaint		
Unemployment payments	286	25.2%
Disability, invalidity and maternity payments	189	16.7%
Child benefit	117	10.3%
No reply to correspondence / Delay	85	7.5%
Old age & retirement pensions	75	6.6%
Illness Benefit	62	5.5%
Carer's allowance	59	5.2%
Widows and one-parent family payment	48	4.2%
Domiciliary Care Allowance	42	3.7%
Pay-related social insurance	25	2.2%
Family income supplement	24	2.1%
Fuel allowance and free schemes	18	1.6%
Occupational injury benefit	8	0.7%
Treatment Benefit	1	0.1%
Miscellaneous	96	8.5%
Total	1,135	

Table 7(b): Office of the Revenue Commissioners		
Numerical and percentage breakdown of types of complaint		
Income tax	30	27.5%
Value added tax, inheritance, Capital gains tax	24	22%
Delay, no reply to correspondence	9	8.3%
Customs and excise	6	5.5%
Stamp duty	2	1.8%
Vehicle Registration Tax	1	0.9%
Miscellaneous	37	33.9%
Total	109	

Table 7(c): Department of Justice and Equality**Numerical and percentage breakdown of types of complaint**

Administration of visa or asylum applications	39	70.9%
No reply to correspondence	6	10.9%
Delay	1	1.8%
Quality of service	1	1.8%
Provision of Service	1	1.8%
Miscellaneous	7	12.7%
Total	55	

Table 7(d): Department of Agriculture, Food and the Marine**Numerical and percentage breakdown of types of complaint**

Rural environment protection scheme (REPS)	48	29.6%
Single farm payment	43	26.5%
Farm development grants	16	9.9%
Forest premium scheme	9	5.6%
Early retirement scheme	7	4.3%
Livestock grants	7	4.3%
No reply to correspondence	3	1.9%
Milk quota	2	1.2%
Area aid	1	0.6%
Area Based Allowance	1	0.6%
Miscellaneous	25	15.4%
Total	162	

Table 7(e): Department of Education and Skills		
Numerical and percentage breakdown of types of complaint		
Higher education grants & fees	32	53.3%
Delay, failure to reply to correspondence	11	18.3%
School Transport	1	1.7%
Miscellaneous	16	26.7%
Total	60	

Table 7(f): Department of the Environment, Community and Local Government		
Numerical and percentage breakdown of types of complaint		
No reply to correspondence	5	23.8%
Motor tax, driving licence, driving test	1	4.8%
Miscellaneous	15	71.4%
Total	21	

Table 7(g): Department of Health		
Numerical and percentage breakdown of types of complaint		
Quality of Service	29	85.3%
Child Care	1	2.9%
Miscellaneous	4	11.8%
Total	34	

Table 7(h): Department of Jobs, Enterprise and Innovation		
Numerical and percentage breakdown of types of complaint		
No reply to correspondence	4	28.6%
Redundancy Payments	2	14.3%
Delay in Service	1	7.1%
Provision of Information	1	7.1%

Work Permits	1	7.1%
Miscellaneous	5	35.7%
Total	14	

Table 7(i): Department of Foreign Affairs and Trade		
Numerical and percentage breakdown of types of complaint		
Passport application	25	80.6%
Visa or Asylum Applications	4	12.9%
Quality of Service	1	3.2%
No reply to correspondence	1	3.2%
Total	31	

Table 7(j): Department of Communications, Energy and Natural Resources		
Numerical and percentage breakdown of types of complaint		
No reply to correspondence	4	57.1%
Quality of Service	1	14.3%
Miscellaneous	2	28.6%
Total	7	

Table 7(k): Department of Transport, Tourism and Sport		
Numerical and percentage breakdown of types of complaint		
No reply to correspondence	1	50%
Motor Tax & Driver Licence	1	50%
Total	2	

Table 8: Civil Service – Numerical breakdown of complaints completed by outcome

	Resolved	Partially resolved	Assistance provided	Dis-continued	With-drawn	Not upheld	Total completed
Social Protection	121	18	240	591	24	401	1,395
Revenue Commissioners	6	1	16	72	1	22	118
Justice and Equality	8	0	18	32	1	2	61
Agriculture, Food and the Marine	19	2	15	46	2	93	177
Education and Skills	4	1	8	31	0	36	80
Environment, Community and Local Government	1	0	4	11	0	5	21
Health	1	0	2	1	0	3	7
Jobs, Enterprise and Innovation	4	0	2	7	0	2	15
Foreign Affairs and Trade	2	0	4	20	0	3	29
Communica-tions, Energy and Natural Resources	1	0	3	2	0	0	6
Transport, Tourism and Sport	0	0	2	1	0	1	4
Office of Public Works	1	0	1	1	0	1	4
Property Registration Authority	2	0	5	7	1	1	16
Others	2	0	8	14	0	4	28
Total	172	22	328	836	29	574	1,961

Local Authorities

Table 9: Local Authorities - Numerical breakdown by local authority of complaints received	Brought forward from 2010	Received in 2011	On hand for 2011
Carlow	12	12	24
Cavan	5	5	10
Clare	14	29	43
Cork City Council *	8	52	60
Cork County	22	70	92
Donegal	19	35	54
Dublin City Council	29	109	138
Dún Laoghaire-Rathdown	12	26	38
Fingal	11	24	35
Galway City Council *	11	35	46
Galway County	15	50	65
Kerry	18	47	65
Kildare	14	22	36
Kilkenny	11	18	29
Laois	24	31	55
Leitrim	3	12	15
Limerick City Council *	8	39	47
Limerick County	18	40	58
Longford	4	9	13
Louth	4	15	19
Mayo	11	21	32
Meath	11	26	37
Monaghan	6	6	12
North Tipperary	5	23	28
Offaly	4	23	27
Roscommon	6	19	25

Sligo	6	20	26
South Dublin	15	26	41
South Tipperary	4	16	20
Waterford City Council	2	5	7
Waterford County	7	24	31
Westmeath	2	14	16
Wexford	7	47	54
Wicklow	9	48	57
Total	357	998	1,355

Complaints received against borough councils, and town councils are included in the county figures.

- * Monthly CIC visits or regional visits were made to these counties in 2011 and this is likely to have affected the number of complaints received.

Table 10: Local Authorities - Numerical breakdown of types of complaint received		
Housing		384
Allocations & transfers	265	
Repairs	79	
Loans & grants	16	
Rents	19	
Sales	5	
Planning		185
Enforcement	114	
Administration	71	
Miscellaneous		134
Delay/Failure to reply to correspondence		96
Roads and traffic		94

Waste disposal		24
Water supply		26
Sewerage and drainage		16
Motor tax & Drivers licence		13
Parks/Open space		4
Service charges		1
Rates		10
Quality of service		10
Provision of service		1
Total		998

Table 11: Local Authorities – Numerical breakdown of complaints completed by outcome

	Resolved	Partially resolved	Assistance provided	Dis-continued	With-drawn	Not upheld	Total completed
Carlow	1	0	8	4	0	5	18
Cavan	0	0	0	4	0	6	10
Clare	1	0	8	15	1	11	36
Cork City Council	7	1	6	22	0	14	50
Cork County	10	1	18	27	0	25	81
Donegal	3	1	18	11	0	9	42
Dublin City Council	8	2	21	44	1	44	120
Dún Laoghaire-Rathdown	1	1	5	10	0	14	31
Fingal	2	0	10	13	0	6	31
Galway City Council	0	1	7	21	0	16	45
Galway County	5	0	10	20	1	19	55

Kerry	2	0	9	19	0	20	50
Kildare	2	2	6	10	0	11	31
Kilkenny	5	0	6	7	0	8	26
Laois	2	0	17	10	0	21	50
Leitrim	0	1	0	8	0	3	12
Limerick City Council	2	1	12	23	0	7	45
Limerick County	3	0	9	23	2	18	55
Longford	2	0	2	3	1	4	12
Louth	2	0	1	6	0	4	13
Mayo	2	0	4	11	1	9	27
Meath	3	0	7	14	0	9	33
Monaghan	1	0	1	2	0	8	12
North Tipperary	1	0	6	12	1	6	26
Offaly	1	0	4	5	1	9	20
Roscommon	0	0	6	9	0	7	22
Sligo	3	1	3	7	0	6	20
South Dublin	4	3	7	11	0	14	39
South Tipperary	5	0	5	3	2	3	18
Waterford City Council	0	0	4	1	0	1	6
Waterford County	3	0	6	12	0	7	28
Westmeath	2	0	5	6	0	2	15
Wexford	2	1	11	22	1	7	44
Wicklow	9	0	12	18	0	10	49
Total	94	16	254	433	12	363	1,172

Complaints received against borough corporations, urban district councils and town commissioners are included in the county figures.

HSE

Table 12: Health Sector complaints 2011 by area

	Brought forward from 2010	Received in 2011	On hand for 2011
HSE : Dublin / North East	130	175	305
HSE : Dublin Mid-Leinster	156	227	383
HSE : West	106	164	270
HSE : South	92	167	259
Hospitals	68	124	192
Complaints relating to the Health Repayment Scheme	44	10	54
Other Service Providers	2	7	9
Total	598	874	1,472

The above table refers to complaints about all health sector service providers. The following tables break these down into two separate complaint types: (i) complaints relating to the provision of health and social care services and (ii) complaints about other services from health sector providers.

Table 13: Health and social care complaints - received in 2011 by complaint category

	Brought forward from 2010	Received in 2011	On hand for 2011
Dental Services	3	6	9
Appointment	1	1	2
Care and Treatment	0	1	1
Complaint Handling	1	0	1
Policy/Administration/Funding	0	3	3
Not otherwise categorised	1	1	2
Disability Services	11	15	26
Residential Care	4	1	5

Day Services	1	4	5
Policy/Administration/Funding	1	0	1
Complaints Handling	4	3	7
Not otherwise categorised	1	7	8
Hospitals - General	79	164	243
Accident and Emergency	1	16	17
Admission/Discharge	2	7	9
Appointment	2	5	7
Care and Treatment	42	75	117
End of Life Care	1	0	1
Out-Patient Treatment	0	1	1
Care of the Elderly	0	2	2
Complaint Handling	19	20	39
Hospital Charges	4	15	19
Hygiene/Cleanliness/Infection Control	0	1	1
Policy/Administration/Funding	1	2	3
Record Keeping	0	1	1
Not otherwise categorised	7	19	26
Hospitals - Psychiatric	13	29	42
Care and Treatment	6	14	20
Out-Patient Treatment	1	1	2
Complaint Handling	3	7	10
Admission/Discharge	0	2	2
Not otherwise categorised	3	5	8
Nursing Homes	29	42	71
Entitlement to Services	3	5	8
Nursing Home Subvention/Support Scheme	16	17	33
Complaint Handling	2	4	6
Policy/Administration/Funding	3	4	7

Not otherwise categorised	5	12	17
Primary & Community Care	23	23	46
Home Help	10	5	15
Home Care Grant	2	1	3
GP Services	4	4	8
Pharmacy Services	1	0	1
Public Health Nurse	0	1	1
Psychiatric Care	2	1	3
Therapy Services (Physio, OT, Speech. etc)	0	1	1
Pre-school Services	2	2	4
Appliances & equipment	0	2	2
Complaint Handling	1	0	1
Not otherwise categorised	1	6	7
Social Work Services	11	52	63
Child Welfare and Protection	3	16	19
Fostering	2	6	8
Complaint Handling	2	5	7
Policy/Administration/Funding	0	2	2
Not otherwise categorised	4	23	27
Treatment Abroad Scheme	1	6	7
Entitlement	0	5	5
Policy/Administration/Funding	0	1	1
Not otherwise categorised	1	0	1
Other	5	10	15
Total	175	347	522

Table 14: Other Health Sector complaints - received in 2011 by complaint category

	Brought forward from 2010	Received in 2011	On hand for 2011
Medical & GP Card - Application	97	149	246
Medical & GP Card - Communication	4	1	5
Medical & GP Card – Complaint Handling	2	3	5
Medical & GP Card – Policy/Administration	1	4	5
Medical & GP Card – Not otherwise categorised	1	5	6
Medical & GP Card-Total	105	162	267
Motorised Transport Grant - Application	11	21	32
Motorised Transport Grant – Not otherwise categorised	0	2	2
Motorised Transport Grant – Policy/Administration	0	1	1
Motorised Transport Grant - Total	11	24	35
SWA – Basic - Application	49	71	120
SWA – Basic-Communication	0	2	2
SWA – Basic - Complaint Handling	1	3	4
SWA – Basic – Not otherwise categorised	0	3	3
SWA – Basic – Policy/Administration	0	4	4
SWA – Basic – Total	50	83	133
Exc. Needs Payment - Application	42	61	103
Exc. Needs Payment - Communication	0	1	1
Exc. Needs Payment – Complaint Handling	0	2	2
Exc. Needs Payment – Not otherwise categorised	1	0	1
Exc. Needs Payment – Policy/Administration	1	1	2
Exceptional Needs Payment Total	44	65	109
Mort. Interest Supp. - Application	11	8	19

Mort. Interest Supp. – Complaint Handling	0	2	2
Mort. Interest Supp. – Not otherwise categorised	0	1	1
Mortgage Interest Supplement - Total	11	11	22
Rent Supp. -Application	42	55	97
Rent Supp. – Complaint Handling	2	3	5
Rent Supp.- Not otherwise categorised	0	8	8
Rent Supp.- Policy/Administration	0	4	4
Rent Supplement Total	44	70	114
Environmental Health Services	1	2	3
Health Repayment Scheme	44	13	57
Back to School C&FA	71	12	83
Mobility Allowance	5	25	30
Not otherwise categorised - Total	37	60	97
Total	423	527	950

Table 15: Health Sector complaints - closed in 2011 by area

	Resolved	Partially resolved	Assistance provided	Dis-continued	With-drawn	Not upheld	Total completed
HSE : Dublin / North East	30	3	38	64	4	125	264
HSE : Dublin Mid-Leinster	31	5	40	104	10	137	327
HSE : West	17	4	26	89	5	82	223
HSE : South	23	2	26	83	2	79	215
Complaints relating to the Health Repayment Scheme	11	0	7	6	0	8	32
Hospitals	10	6	25	80	3	29	153

Other Service Providers	0	0	2	4	0	1	7
Total	122	20	164	430	24	461	1221

The above table refers to complaints about all health sector service providers. The following tables break these down into two separate complaint types: (i) complaints relating to the provision of health and social care services and (ii) complaints about other services from health sector providers.

Table 16: Health and social care cases - closed in 2011 by complaint category							
	Resolved	Partially resolved	Assistance provided	Dis-continued	With-drawn	Not upheld	Total completed
Dental Services	2	0	4	2	0	1	9
Disability Services	1	2	6	11	0	1	21
Hospitals - General	15	5	38	97	3	39	197
Hospitals - Psychiatric	2	2	6	22	2	4	38
Nursing Homes	11	1	8	17	3	15	55
Primary & Community Care	7	2	8	12	0	8	37
Social Work Services	1	2	9	31	1	5	49
Treatment Abroad Scheme	0	1	1	2	0	2	6
HSC – Other-Not otherwise categorised	0	0	3	6	0	6	15
Total	39	15	83	200	9	81	427

Table 17: Other Health Sector complaints - closed in 2011 by complaint category							
	Resolved	Partially resolved	Assistance provided	Dis-continued	With-drawn	Not upheld	Total completed
Medical & GP Card	17	3	18	50	9	135	232
Medical & GP Card Total	17	3	18	50	9	135	232
Basic SWA Total	10	1	15	52	3	34	115
Exceptional Needs Payment	4	0	6	18	0	70	98
SWA – Rent Supplement Total	6	0	17	46	1	24	94
SWA – Mortgage Interest Supplement Total	0	0	0	11	0	8	19
HSE – SWA - Not otherwise categorised	1	0	0	1	0	7	9
SWA Total	21	1	38	128	4	143	335
Mobility Allowance	1	0	1	9	0	11	22
Motorised Transport Grant	1	0	2	1	0	16	20
HSE-Other Payments - Not otherwise categorised	4	1	3	4	1	16	29
Other Payments Total	6	1	6	14	1	43	71
HSE – Other- Environmental Health Services	0	0	1	2	0	0	3
Back to School Clothing & Footwear Allowance	21	0	6	4	0	43	74

HSE – Other-Health Repayment Scheme	11	0	7	8	0	9	35
HSE – Other – Not otherwise categorised	7	0	5	24	1	7	44
Total	83	5	81	230	15	380	794

Table 18: Complaints under the Disability Act 2005 Received in 2011

Category	Brought forward from 2010	Received in 2011	On hand for 2011
Access to Services (Section 26)	1	3	4
Access to Information (Section 28)	0	1	1
Sectoral Plans (Section 31 to 37)	0	1	1
Total	1	5	6

Table 19: Complaints under the Disability Act 2005 - closed in 2011

Category	Resolved	Partially resolved	Assistance provided	Dis-continued	With-drawn	Not upheld	Total completed
Access to Services (Section 26)	0	0	2	0	0	1	3
Access to Information (Section 28)	0	0	0	0	0	0	0
Sectoral Plans (Section 31 to 37)	0	0	0	0	0	1	1
Total	0	0	2	0	0	2	4

An Post

Table 20: Numerical breakdown of complaints received	Brought forward from 2010	Received in 2011	On hand for 2011
An Post	10	55	65

Table 21: Numerical breakdown of complaints completed by outcome							
Category	Resolved	Partially resolved	Assistance provided	Dis-continued	With-drawn	Not upheld	Total completed
An Post	7	0	10	28	1	16	62

